How a $29 Billion City Goes Broke
The Editors

Our Universal Civilization
by V. S. Naipaul

NY
THE CITY JOURNAL

Sonny Carson's Politics of Protest
Tamar Jacoby

Handcuffing Prosecutors
by James B. Jacobs

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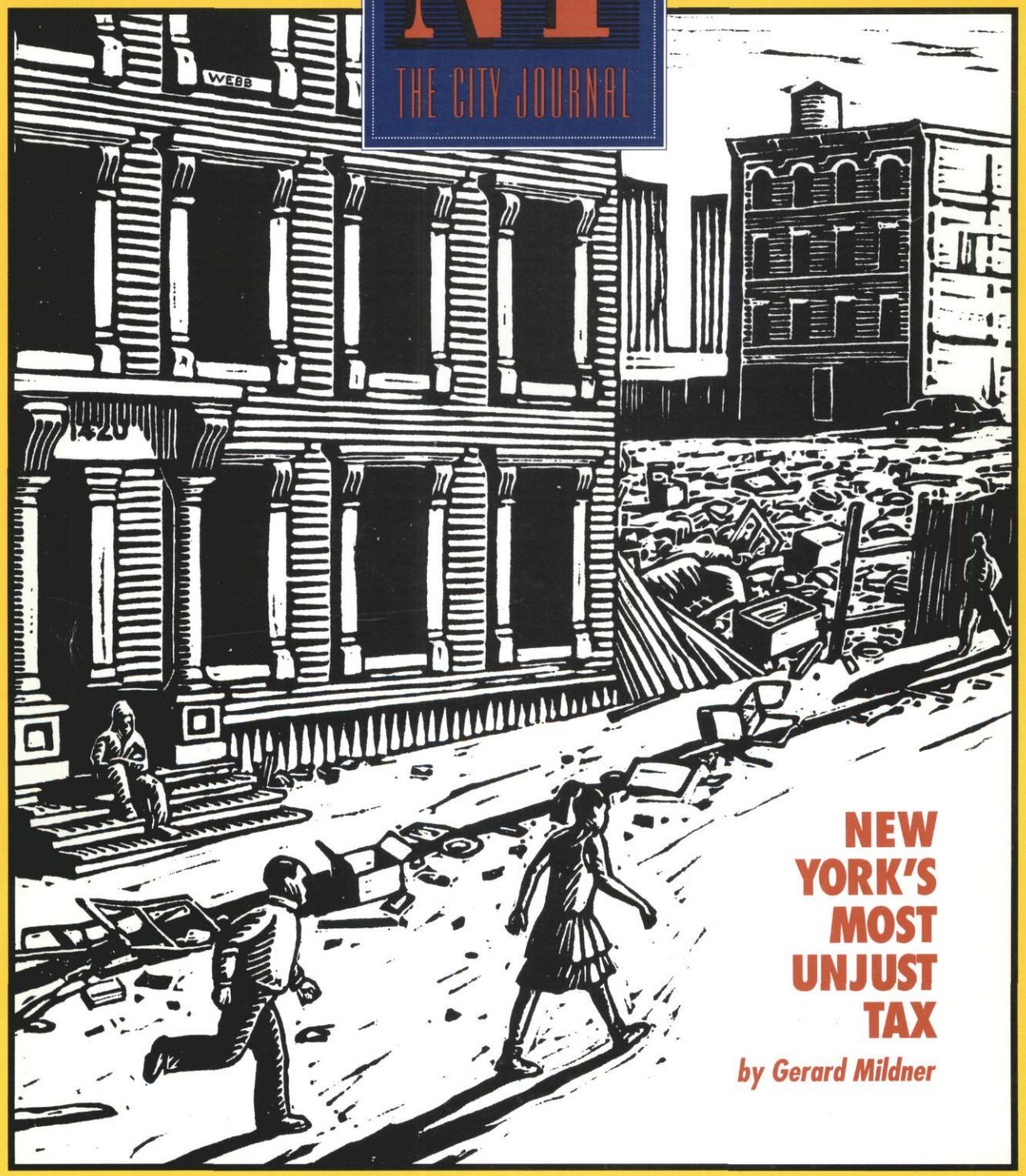

NEW YORK'S MOST UNJUST TAX
by Gerard Mildner

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EDITOR'S JOURNAL

FORTUNATE PROSPECTS

If there were ever any doubt that misery loves company, surely it would be dispelled by the enthusiasm with which New York's politicians greet the news that many other cities and states around the country are in fiscal trouble too. New York's leaders love to point out that they can hardly be blamed if New York shares in the effects of a national recession. We're just the same as those other places, see.

Well, not quite. As several of the pieces in this issue show, the most important fact about the governments of both New York State and City is how atypical they are. Not unique, of course: As **Gerard Mildner** points out in this issue, though New York City certainly has the highest tax rates on apartment buildings and commercial properties of any major U.S. city, it does have a rival: Detroit. This rivalry, suffice it to say, does not detract from Mildner's thesis that New York's property taxes are helping to destroy the city's housing stock and contracting the tax base, especially in poor neighborhoods.

New York State is neither the highest-taxing nor the highest-spending state in the nation on a per capita basis, though it ranks in the top ten for both. Add in local spending, however, and it is far and away the national leader (excluding Alaska and Wyoming, which produce weird numbers because they have lots of mineral royalties and nobody lives there). Among states with

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high state taxes and spending, New York is virtually alone in also having high local taxes and spending. One reason for this, as **Edwin Rubenstein** shows, is that New York State by far leads the nation in the use of state "mandates": programs the state designs but then requires localities to implement and help fund. Thus in New York an increase in state spending usually produces a corresponding mandated increase in local spending, ensuring that Albany and its local governments will all go bust together.

As **Lawrence Mead** points out, New York City leads the nation by far in welfare dependency, with almost 15 percent of the population on some sort of public assistance. New York State, however, also leads the nation in resistance to welfare reform. We particularly resist the idea that welfare recipients should be required to work for their checks, though such requirements not only get people off welfare but improve their lives and their behavior even while they remain on the rolls. Yet New York so resists this idea that it has been willing to risk hundreds of millions in federal aid to avoid enforcing work requirements.

Professor **James Jacobs** of NYU law school dwells on a different category of New York exceptionalism: New York's criminal justice procedures. In most states, of course, crime victims, police, and prosecutors complain that the federal courts keep them from pursuing criminals as zealously as they would like. New York, however, is virtually unique in that its criminal procedures offer far greater protection for suspects than do the federal rules. If New York's procedures reflected simply those rules imposed by the federal courts, it would be far more difficult to get away with murder, among other crimes, in this state.

Life is tough all over; we have chosen to make it tougher here—and far more expensive. Rising crime is a national problem and New York is not the most dangerous place in the country. But by its own choice it is far more dangerous than it need be. All inner cities are ravaged by the pathologies of the underclass, pathologies nurtured by a welfare system that has long exempted the poor from the normal rules of American life. New York, however, does not have the poorest population in the nation and need not have the nation's worst welfare problem.

If New York's combined state and local spending were reduced, not to anything like the national average but simply to the average of the next five most spendthrift states, both New York State and City would be comfortably in the black, and the fiscal crisis would be something happening in Connecticut or California. If New York City's commercial or multi-unit property taxes were merely the fifth highest for major American cities, they would be 25 percent lower, and thousands of abandoned and decayed buildings would be sheltering low-income families today.

The worst thing our leaders can do in the current crisis is to blame "conditions beyond our control." Pleas of helplessness are counsels of despair. Precisely because our problems are caused not by "conditions" but by our own mistakes, this state and city still have wonderful prospects. What we have done we can undo, what we have made we can change.

Pride and despair are constant companions, coupled vices. If we can develop the humility to give up our exceptionalism and learn that even a place as great as New York cannot always spend the most, tax the most, or defy common sense and get away with it, the reasons for despair will vanish too. We need neither pride nor despair but a healthy dose of realism, for in reality we are still a fortunate people in fortunate circumstances which, with a bit more honesty about our own mistakes, we should long enjoy. *—RV*

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LETTERS

Fair Grounds

Walter Olson describes the city's new "fair-share" provisions as an invitation to myriad parochial lawsuits as well as a barrier to the "responsible" selection of sites for city facilities like libraries, halfway houses, and welfare offices ["Sue Thy Neighbor?" Spring 1991]. In fact, fair share is neither of these things.

People sue the city. It does not take a couple of new Charter sections to inspire lawsuits aimed at preventing or delaying city actions. Cases against the city are heard virtually every day in the courts. By creating a structured framework for the communities to learn early on in the process what the city is planning to do in their neighborhoods, and by establishing a set of standards with which to assess these plans, fair share aims to reduce the potential for litigation.

If agency bureaucrats had attempted in some organized way to plan fairly for city facilities, fair share would not have been necessary. In reality, what governed the process of finding the site for a homeless shelter, for instance, were short-term considerations of expediency: the availability of cheap land, much of which had fallen into public hands through foreclosure, and the path of least resistance politically. As a result of this sort of "criteria," and other economic and political factors, we faced a tremendous overconcentration of city facilities like homeless shelters, transportation, and waste facilities in neighborhoods where lower-income New Yorkers reside.

Amidst the hyperbole, Mr. Olson avoids defining fair share, misrepresents my comments on the city's initial draft of the fair-share rules, and fails to put fair share in the context of the city's new Charter-mandated siting process.

The fair-share criteria, a set of considerations to be used in formulating and reviewing plans for new city facilities, require us to balance a number of factors, such as community needs for services, efficient and cost-effective delivery of those services, and the distribution and impacts of existing, as well as planned, city and noncity facilities.

The fair-share criteria indeed give us "the tools necessary for testing the agencies' good faith before the [City Planning] commission and other appropriate forums." By "other appropriate forums," I did not mean, as Mr. Olson suggested, only in the courts. Fair share creates a set of standards by which the City Council, which has ultimate jurisdiction in site selections, can evaluate projects. The criteria will guide consideration of the equity of facility siting proposals in the courts of public opinion and in the press. If a community group does sue to block a project, the city will now have sufficient grounds to justify and defend what constitutes a "fair" siting and win the case. Far from encouraging lawsuits, the rules act as a deterrent.

This spring, we proposed Manhattan locations for 13 city facilities, including homeless SRO housing and residences for AIDS patients. These sites were selected after extensive consultation with community members, policy advocates, elected officials, and city agencies. In each case, the appropriate community board overwhelmingly voted to approve housing the proposed facility. These positive results stand in vivid contrast to the provincial obstructionism Mr. Olson predicts for the future.

Ruth Messinger
Manhattan Borough President
New York, N.Y.

Walter Olson predicts with great clarity the wave of litigation and consequent delay that is likely to be generated by the "fair-share" proviso in New York City's new Charter. Would that this were the only problem to emerge from fair-sharing of the city's blessings and burdens.

Like other slogans that bespeak sentimental egalitarianism, municipal fair-sharing between districts runs headlong into predictable aspects of human behavior. It assumes that everyone would benefit were all land in the metropolis of equal market value, instead of varying in value, as is the case in New York and other large cities, from less than $1 to more than $1,000 per square foot. The price range represents the differences in demand for diverse types of land with varying accessibility and attractiveness. To pretend that these market differences—often but not always reflective of objectively certifiable differences in usefulness—do not exist is to tamper with the mainspring of local government financing.

In short, to put a jail in the midst of a high-value residential or business district in the interest of egalitarianism is to undermine the basis of municipal finance that depends on sustaining ratable values at their highest possible level. Zoning has its abuses, as we all know, but its fundamental purpose is to prevent externalities from destroying land values and precipitating a municipal finance crisis. In

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that sense zoning merely replaces private covenants running with the land. Before 1916, they afforded a measure of stability to New York's finances by assuring that unwelcome facilities necessary to municipal life were not casually sprinkled on high-value land.

If anyone seriously wanted to assure fair sharing of burdens and blessings, he might properly begin by repealing the use provisions of the zoning resolution. Since the voters generally approve those provisions, we can surmise that if they understood what the new Charter intended, they might have turned it down.

Roger Starr
Editorial Board
The New York Times
New York, N.Y.

The recent revelation of an obscure provision of the new City Charter, requiring the fiscally strapped city to spend up to $400,000 on art works for new city buildings, has led some former Charter supporters to wonder about what they bought into. But striking though such revelations are, they pale before the problems presented in Walter Olson's article.

Self-government, outside of small, face-to-face communities, has depended on the representation of citizens, whatever their backgrounds, in the councils of government. Secure in having achieved fair representation, citizens could generally accept political defeat insofar as the decision-making proceeded fairly. But under the new Charter, as Mr. Olson points out, no decision ever need be final so long as advocates on one side decide to dispense with representation by replaying the political process in the courts. The upshot of displacing politics onto the courts is likely to be an expensive series of public policy stalemates. For example, in the case of the judicial legislation creating special education for New York City schools, plaintiffs' lawyers are still meeting weekly, at huge expense to the city, to iron out the details of the court's legislative pronouncements 12 years after the initial decisions. We can expect the disaster of special education to be repeated many times over as a city which already functions only fitfully finds further excuses for administrative failure.

Fred Siegel
The Cooper Union
New York, N.Y

It Takes All Kinds

We at Pacific Legal Foundation emphatically agree with Gordon Crovitz ["Taking Rent Control to Court," Spring 1991] that rent control is ripe for constitutional attack. In recent years, the U.S. Supreme Court has shown a renewed interest in applying constitutional protections to property owners. The high-water mark to date was *Nollan* v. *California Coastal Commission*, in which the Court invalidated a land-use regulation as an uncompensated taking of property in violation of the Takings Clause of the Fifth Amendment.

The Supreme Court's new direction has been reflected in a growing number of state court decisions as well. Most dramatically, in 1989 the New York Court of Appeals applied *Nollan* to strike down a New York City hotel regulation in *Seawall Associates* v. *City of New York*. This was the first time the highest New York court found a property regulation to violate the Takings Clause on its face.

Pacific Legal Foundation attorneys argued *Nollan* before the Supreme Court and participated in *Seawall* as amicus curiae. These decisions were therefore very gratifying to us and provide strong encouragement to all who are working to end rent control and similar regulatory schemes. However, they highlight our one point of disagreement with Mr. Crovitz's otherwise outstanding article.

Nollan established that regulations challenged as takings must receive closer judicial scrutiny than the "rational relationship" test applied in due process cases. This heightened scrutiny—known as the "substantial advancement" test—is what accounted for the victory in *Sewall*. It is a formidable weapon in any judicial defense of property rights and should be the central feature of a constitutional assault on rent control.

New York courts have routinely upheld rent control against "rational relationship" challenges. Every due process case that has ever been brought—and they are legion—has been decided against the property owner under the test that Mr. Crovitz endorses. In legalese, "rational relationship" is just another way of saying "deference to the legislature." The typical outcome is that of *Benson Realty Corp.* v. *Beame*, in which the Court of Appeals sniffed: "Whether there is a need for [rent] controls is a matter for legislative determination."

Rent control has survived for fifty years *because* courts have reviewed it exclusively under the "rational relationship" standard. The main reason rent control is now vulnerable is that a powerful new tool—the "substantial advancement" standard—is available to defenders of property rights. It would not be prudent to go into court without it.

Ronald A. Zumbrun
President
Pacific Legal Foundation
Sacramento, Calif.

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Melting the Myth

A footnote to Maggie Gallagher's piece ["The Myth of Multiculture," Spring 1991]: Perhaps it is worth remembering that most of the immigrants to America over the past three and a half centuries, including the Western Europeans, have come here to get away from the societies into which they were born, not to have a new place in which to wrap themselves in the flags of the old regimes.

Tom Wolfe
New York, N.Y.

Just What the Doctor Ordered

Edwin S. Rubenstein's article ["Emergency Surgery for Medicaid," Spring 1991] brings long-overdue attention to this single fastest-growing component of the state budget. As my office has reported in literally dozens of audits and special studies, the Medicaid program in New York State is out of control—and not just in terms of spending. This program, while consuming tens, and perhaps hundreds, of billions of dollars since its establishment in 1965, has failed to significantly improve the access of the poor to quality, managed health care services. Indeed, as the author noted, for most Medicaid recipients there is no access at all to the primary health care providers in our society—physicians. As a result, the health of our most needy citizens is nearly as at-risk today as it was 25 years ago.

In attempting to be all things to all people, the Medicaid program has, predictably, failed even while running up immense costs—both monetary and human.

Edward V. Regan
State Comptroller
Albany, N.Y.

Mr. Rubenstein's article raises important public policy questions. Some of his conclusions have merit, particularly when he suggests that overregulation adds to medical costs.

However, in comparing New York and California Medicaid costs, not only does New York provide more benefits to a broader segment of the population, but it uses different financing mechanisms which can make comparisons misleading.

The article notes that hospital costs for Medicaid recipients are significantly higher in New York than California. This contrasts with a recent General Accounting Office report that both Medicare and Medicaid payments for similar inpatient hospital services were significantly *lower* in New York than in California. An earlier study by the Bigel Institute of Brandeis University concerning Medicare arrived at a similar conclusion. One explanation for these seemingly contradictory results might be that New York State Medicare patients are more severely ill and require more expensive care.

Mr. Rubenstein advocates using California's approach of negotiated rates to lower New York's Medicaid rates, and he decries policies which have resulted in a New York State hospital occupancy rate of 85 percent versus California's 62 percent, pointing out that high occupancy would make the negotiation of rates difficult. But there is an even more important factor which precludes the use of negotiated rates in New York State. In New York, hospitals have to render services for *all* non-Medicare patients at government-set rates which often are below cost. California regulates hospital fees for Medicaid patients only. Thus California hospitals can cost-shift and operate at a profit while receiving reimbursement at below cost for Medicaid services. In New York State, hospitals do not have the ability to shift costs. Mr. Rubenstein looks at Medicaid costs in a vacuum, not at total health expenditures per capita. When total costs are considered, New York does better than California.

Daniel Sisto
President
Hospital Association of New York State
Albany, N.Y.

Edwin Rubenstein replies:

I agree with Mr. Sisto: Medicaid costs cannot be viewed in a vacuum. Thus when he states that "Medicaid payments for similar inpatient hospital services were significantly lower in New York than California," he should note that the mix of services required by Medicaid recipients in the two states is quite different. Because New York's program skimps on primary physician care and avoids HMOs, our Medicaid patients are sicker and stay in the hospital longer than California's. The average cost of Medicaid inpatient hospital services in 1989 was $7,122 per patient in New York versus $3,648 per patient in California.

California's switch to selective hospital contracting spurred numerous cost-saving innovations, including outpatient surgery centers and new at-home services, enabling patients to leave the hospital earlier. Total health care costs were reduced; it was not simply a matter of shifting costs to non-Medicaid payoffs, as Mr. Sisto suggests. ■

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Unbearable Obligations

Felix Rohatyn made the point about as pithily as possible months ago: "A city with a budget of $29 billion, a payroll of $15 billion, a municipal workforce of over 300,000 people, and a capital program of $5 billion per year is not exactly without resources."

The city counts a bit differently than Mr. Rohatyn, but the essential point holds true: New York City raises and spends an enormous amount of money. Even after the drastic budget cuts now planned, it will remain by far the most free-spending large city in the nation. Add in state spending within the city's borders, then compare the total with per capita state and local spending for other large American cities (the only really fair comparison, since who pays for what varies so much from state to state), and New York is simply off the map. The tax burden required to support such spending is twice the national average.

Yet at this writing we are being told that we cannot afford the most routine municipal services: clean streets, parks, bridge and road maintenance, or fully funded schools. Clever folk wink and nod and say, "It is the old Washington Monument ploy": The politicians are deliberately chopping the services we care about most, cutting bone before fat, to scare more money out of the taxpayers, or the unions, or the Feds, or the state, or MAC, or whomever. There is some truth in this, but less than one might hope. The most unsettling thing about the current budget debate is how sincere the Dinkins administration is when it says it cannot see how to balance the budget except by cutting the basics.

Under New York's prevailing political assumptions and institutional commitments, cutting the basics will be the only possible answer whenever an economic downturn slows revenue growth. The city has lost control over most of its spending, except on those basic services. In New York, the Washington Monument ploy is not a political dodge; it is very nearly a constitutional obligation.

Both the budget gap and the city's loss of fiscal control stem from three overarching and overlapping commitments: to spending that is legally mandated (usually by the state); to a costly menu of services, mostly in social welfare, not provided by most cities; and to serving the interests of its own vast government institutions before those of its citizens.

About the first of these, mandated spending, there is little the city can do without help from the State Legislature. As Edwin Rubenstein makes clear elsewhere in

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Randall Filer is a professor of economics at Hunter College and the Graduate Center of the City University of New York . . . James Taranto is a staff reporter for NY . . . *Maggie Gallagher is a senior editor of* NY . . . *Raymond Domanico directs Manhattan Institute's Center for Educational Innovation.*

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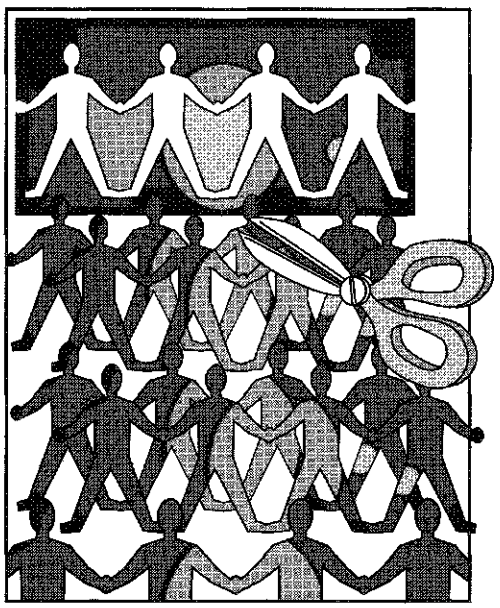
this issue, it is difficult to assess accurately how much of local government spending in New York is mandated by state or federal law. But a quick glance at the city's $29 billion budget for fiscal 1992 gives the rough dimensions of the problem. Categorical aid from the federal and state governments, which is targeted to specific programs and over which the city has little control, accounts for more than $8.5 billion. Mandates and other legal obligations leave the city only modest discretion over another $8 billion it spends on debt service, pensions, welfare, corrections, and health services including Medicaid.



That leaves about $12 billion, or just a bit more than 40 percent of the budget. Much of that is devoted to the basics: police, fire, education, parks, sanitation, etc. But even within these areas mandates loom large, leeching money away from basic educational services to meet exotic requirements, or diverting police funds into job-training programs under the fiction that they form part of a coherent anticrime campaign. All in all, New York City is in firm control of less than half its budget and may control as little as 25 percent. The city's power to control its own spending has been so circumscribed that when budget crunches come, only basic services can be cut.

The second obligation—to an unusual menu of services—overlaps the first. In most other states Medicaid and welfare are essentially federal-state partnerships. But by state mandate, New York City is responsible for about one-quarter of the money spent on those programs, more than any other major city in the country. In a recent report, the Citizens Budget Commission rightly identified this unusual local obligation as one of the most powerful causes of the city's recurrent "structural" deficits.

These mandated programs, however, are only the beginning. New York is the only major American city, for example, that builds, rehabilitates, and subsidizes a significant portion of its own housing stock, a commitment that costs more than $1 billion a year. And speaking of the Washington Monument, New York spends nearly all of its roughly $200 million in Federal Community Development Block Grant funds—money used by most cities for parks and playgrounds—on its housing bureaucracy. The housing programs themselves appear necessary only because the city previously took on another unusual obligation: the intense, detailed, and destructive regulation of the housing market. The city's rent regulation system drove private landlords and builders out of the unsubsidized market in low- or moderate-income neighborhoods, and without even significantly reducing average rents.

Among other untraditional services, the municipal hospitals particularly stand out. Few major cities have even one municipally-owned hospital; New York has 16, absorbing an annual subsidy of at least $500 million. The city hospitals are also an excellent example of the city's third and most destructive commitment: to the institutions of government rather than the interests of citizens, or perhaps more charitably, to the idea that service to citizens can be measured

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primarily by the funding of institutions. This commitment, now a cornerstone of the city's political culture, makes it almost impossible to deliver essential services at a reasonable cost.

The $500 million the city spends on keeping the hospitals afloat, for instance, represents the city's aid to the indigent uninsured sick. City hospitals are obliged to accept such people, many of whom habitually use expensive emergency room services for routine medical care and are treated by a succession of doctors who know nothing of their history. The city picks up the tab. But one reason the poor rely on emergency rooms for basic care is that family physicians are virtually unknown in many poor neighborhoods, largely because neither Medicaid nor the city makes it worth their while to treat the poor. (Medicaid reimbursements for doctors' visits are less than $20.) Why then does the city continue to act as though the most efficient way to help the ailing poor is to send a $500 million subsidy to vast public institutions? Is there any reason to believe that the New York City government will be particularly good at running hospitals—good enough to justify spending scarce dollars meant for the care of the poor on the care of bricks and mortar, administrators and rulebooks?

Similarly, New York City spends on average more than $7,000 per student on its public schools, with unimpressive results. Current plans to close the budget gap call for teacher layoffs, but make little effort to reform a system that still has far too many administrators and bureaucrats and spends just about half of its funds on actual education. How to reform the system is no mystery. Public school choice, as successfully practiced in East Harlem's District Four, makes the expensive and destructive command-and-control apparatus of the bureaucracy unnecessary: Schools are directly accountable to parents and students. Only the city's devotion to vast, unfathomable, and ungovernable central institutions keeps us from having schools in which most of the dollars go to teachers and students.

This commitment to the institutions is perhaps most evident in what the Citizens Budget Commission calls the "roller coaster" pattern of city employment, under which the number of city employees varies not primarily with changes in government strategies or citizens' needs, but with how much money is available. Thus throughout the early and mid-1980s, when the city was still recovering from the 1975 fiscal crisis, both city employment and expenditures remained moderate. The annual general-fund budget increased by just $5.3 billion between the austerity year of 1980 and 1985. (At $13.5 billion, the city's 1980 budget was actually $400 million less than in 1976.) Almost a third of that increase came in 1985. By 1985 city government employment had come back only to its 1976 level of 212,000. And yet by then the city had visibly come back. The streets were cleaner, the police force had nearly returned to its customary staffing levels, the subways were better. In short, most of the visible manifestations of austerity had departed.

Between 1985 and 1990 city government added 31,000 employees

Then, with the crisis behind us and revenues clipping along, employment and spending took off. By 1990 annual general-fund spending was more than $7 billion higher than it had been in 1985, with another $6 billion in increases scheduled for just the next three years. City government

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added 31,000 employees. Yet it would be very difficult to argue that the quality of life, or of government services, improved significantly after 1985.

Even today neither Koch veterans nor Dinkins newcomers can give a very satisfactory account of what those new employees contributed to city life. One is left with the very powerful impression, mitigated only slightly by an examination of the details, that in the absence of any real strategy for improvement the city was simply pumping fuel to the institutions, as if the only management instruments at its disposal were an accelerator pedal and a fiscal emergency brake, both connected to a machine the operators do not quite understand.

That the most memorable policy move of the current administration is the decision to give unexpectedly large raises to city workers reflects less on David Dinkins than on the mindless, blunt instrument New York City government has become. To raise or not to raise, to lay off or not to lay off: these are the leading items on the rather short menu of decisions available to city leaders as long as the city's three big obligations—to mandates, untraditional services, and institutions rather than citizens—dominate its politics and policies.

Now it is again time to pull the brake, and the results will be chaotic. Clearly, on the evidence of the past six years, there are at least 30,000 workers and several billion dollars sloshing around the city budget that are making little contribution to city life. Yet no one in the city government seems to know how to pick out just those workers and dollars we do not need and keep the rest.

The bowels of the bureaucracy are dark and deep, the institutions are unfathomable; but the Central Park Zoo, or the swimming pools, or teachers in the classroom, or cops on the beat are right out in the open. Unless we can shed the commitments that commit the city against its citizens, those are the things we will lose, and we will miss them more than the Washington Monument.

—The Editors

Tracking Down the Hidden Homeless

Is there an enormous population of New York families living on the edge of homelessness? The majority of New York families who enter city shelters come from shared housing. From that fact, advocates for the homeless have reasoned that the more than 300,000 doubled-up households in New York constitute a vast pool of potential future homelessness. In this view, the root cause of homelessness is a severe citywide housing shortage. The 300,000 doubled-up families are both proof of the housing crisis and a measure of how bad the homeless problem could get if the city does not act to provide more housing.

It is not only activists who hold this view. References to doubled-up families as the hidden homeless abound in city documents and press reports. A 1984 New York State Department of Social Services report refers to the "more than 143,000 poor families [who] were 'doubled-up' in the homes of other people," claiming that "while not all these families are on the brink of homelessness, many of them probably are." A look at the data, however, suggests that this widespread impression is wrong. The overwhelming majority of those in shared housing are not at risk of homelessness. For most doubled-up New Yorkers, shared housing is a perfectly normal, even desirable housing choice.

The most reliable, up-to-date information about the composition of doubled-up households can be found in the 1987 New

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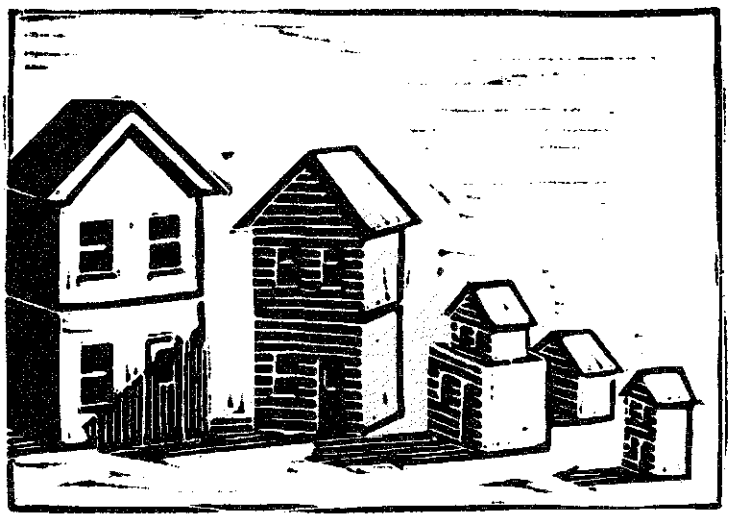
York City *Housing and Vacancy Survey*. Eighty-nine percent of New York City's 2.7 million inhabited housing units are occupied by a single nuclear family, consisting of either one or two adults and their children. (A small fraction of these households also contain an unrelated person connected to the family by economic ties, mostly live-in help, but also occasionally foster children.) The "hidden homeless," if any, must be found among the remaining 307,000 doubled-up households.

Very few of these households are poor. For instance, only about 11.6 percent of New York's doubled-up families are on public assistance. That alone suggests that relatively few of the doubled-up are candidates for homelessness. A more detailed look at just who lives in shared housing in New York confirms that conclusion. The 307,000 doubled-up households in New York can be divided into six major groups:



Thirty-nine thousand households consist of a man and a woman living together without children. The Census Bureau may refer to such couples as POSSLQs (Persons of the Opposite Sex Sharing Living Quarters), and the more romantic may call them "lovers," but surely no one would call them a major concern for New York's housing policy.

Another 47,000 households consist of adults of the same sex, also without children. They may be roommates, or lovers with alternative sexual preferences, but very few are on public assistance or living in crowded conditions. Fewer than 1,300 doubled-up households consist of either same or opposite sex couples who report children under 18 also living in the household.

Some 59,000 of the "doubled-up" households consist of an elderly parent or other relative living with the primary family—surely more a sign of healthy families than of a housing crisis. (Since the information in the *Housing and Vacancy Survey* is more limited than one might like, technically this category consists of all households where a relative who is at least 14 years older than the householder has moved in with the primary family.)

Another forty thousand doubled-up households contain only the householder and one or more minor relatives at least thirty years younger—typically children being raised by grandparents. In a city dealing with widespread child abuse, drug addiction, AIDS, and incarceration, such doubled-up households appear to be a social solution rather than a social problem. Indeed, the city, through the "foster grandparents" program, actually encourages the creation of these households. (See Maggie Gallagher's article, page 16.)

A potentially larger source of concern is the 89,000 households containing relatives of the householder who are roughly the same age or younger than the householder. These may be as innocuous as sisters rooming together, or they may be as troublesome as young adult children who cannot afford to

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move out. One thing they cannot be, however, is a major source of future homelessness among families, since almost every family that enters the shelter system contains one or more children. Yet only two thousand of these households contain children other than those of the head of the household. Consequently, this pool cannot contain very many potentially homeless families.

The last major group of the doubled-up is the 33,000 families consisting of the householders, their children, and their grandchildren. It is unclear to what extent these households are a cause for concern. Is the middle generation trapped in shared housing because of economic conditions, or do they view living with parents as a desirable option? Some may indeed be mature adults forced to move in with their parents for economic reasons. On the other hand, some are undoubtedly women seeking temporary havens after a divorce. Others may be recent immigrants following long-standing patterns of close family living. And still others may be unmarried teens with children, for whom living with parents is the best possible option.

As these data suggest, New Yorkers live in a variety of housing situations. Most, however, seem normal, healthy adaptations to personal circumstances rather than a cause for public concern. This is not to say that no families in the city are doubled-up because they cannot afford better housing. It does suggest, however, that the number of such families is far smaller than is often claimed.

The housing survey does contain information that may allow us to identify the real dimensions of the hidden homeless problem. To find the hidden homeless, we must look for households that are: 1) doubled-up, 2) on public assistance (including AFDC, SSI, Home Relief and other programs), and 3) living under crowded conditions, which the city defines as more than one resident per room. If poor families live crowded together in inadequate housing, it is a good guess that they have been forced to do so by precarious economic circumstances. These are the families most likely to be at risk of becoming homeless. They are also, as the data make clear, only a tiny fraction of those living in shared housing.

As of 1987, there appear to be at most 15,000 doubled-up families on public assistance. The other twenty thousand doubled-up households receiving public assistance consist of only single individuals in addition to the primary family, and thus are unlikely to be a source of future family homelessness. Of the 15,000 doubled-up families on public assistance, only about two thousand were living in crowded conditions. Only these two thousand families really deserve the label "hidden homeless," i.e., people who might become homeless not because of some unusual behavior or change in circumstances but because they have been seriously unable to find housing. Thus the hidden homeless amount to less than seven-tenths of 1 percent of all families sharing housing. Since 1987, however, there have been over 38,000 entrances into the city shelter system. Either the same families have been churning through the shelter system, or most of the families in the system were made homeless by factors far more complex than simply a tight housing market forcing many families to double up.

—Randall Filer

Mindless Law in Topless Bar

In the rear of a building on Queens Boulevard in Elmhurst lies a perverse monument to New York City's housing bureaucracy: a wheelchair ramp no wheelchair-bound person could ever use. The incline is too steep, the turns too sharp, the bottom of the ramp too far off the ground for a

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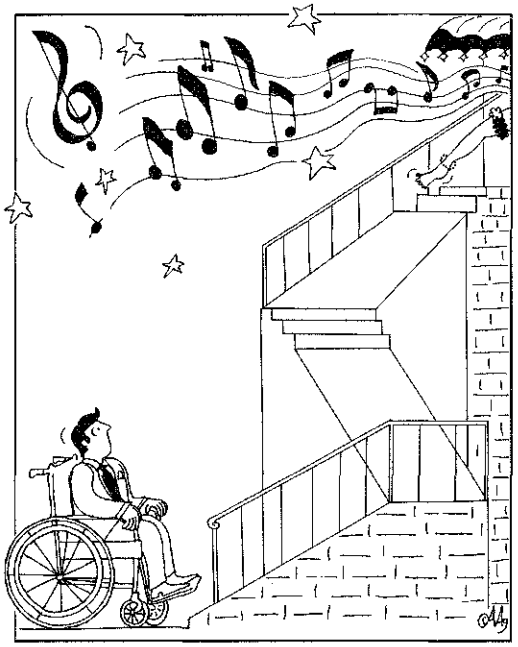
wheelchair to scale. Nonetheless, the owners of the establishment, now a topless bar called Gold Fingers, had to spend $22,000 to install the ramp, because of a city ordinance called Local Law 58.

The 1987 law, passed by the City Council at the behest of advocates for the disabled, requires all new or renovated buildings in the city, except one- and two-family homes, to be made accessible to wheelchairs. (In apartment buildings of less than five stories without elevators, only ground floor units must be wheelchair-accessible.)

Given New York's aging housing stock, the most onerous restrictions imposed by Local Law 58 may be those on renovations. The law requires that any building undergoing "gut-rehab" (renovation costing more than half the value of the building) or being converted to a different use (e.g., from a house to an office) be made fully accessible. For buildings undergoing lesser renovations, any part of the building being changed must be made accessible, thus saddling small businessmen, landlords, and condo and co-op dwellers with exorbitant costs for seemingly minor renovations.



Suppose, for example, you live in a co-op apartment in an elevated building and want to install an extra half-bathroom. Even if your existing bathroom is large enough to accommodate a wheelchair, the extra bathroom must also be spacious enough for a wheelchair, regardless of whether the building itself is wheelchair-accessible. And you must do all of this in your own apartment, at your own expense, whether or not you or anyone you live with is disabled.

The case of Gold Fingers is a vivid example of the sometimes absurd results of the law. The bar's rear entrance is about 72 inches off the ground, and the law requires that wheelchair ramps be one foot long for every inch of lift. There was not enough space to install a 72-foot-long ramp, so the architect, Marvin Schwartz, improvised, squeezing a ramp in next to a staircase.

At its lowest point, the ramp is eight and a half inches above the ground. The bottom of the ramp runs into the side of the staircase, so the only way to approach the ramp is from the side. If your wheelchair were two and a half feet wide, you would somehow have to roll the left wheel one foot straight up just to get on the ramp. Then you would have to wheel up nearly ten feet on an 18.5-degree incline, make a 180-degree turn, and scale another, similar incline. If you could then roll up a four-inch step, you would be ready to enter Gold Fingers. On your way out you would risk serious injury even if sober. "You would go head over heels going down that thing; it is just too steep of an incline," Schwartz says. Nonetheless, the city, which had refused to waive the ramp requirement, gave its approval, satisfied that "we made an attempt to put a ramp in."

The law can discourage property owners from making necessary repairs, sometimes forcing them to choose between obeying the law and protecting their own and their

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tenants' safety. One architect says a client's building in Queens had a shoddy, hazardous entrance staircase that needed repair. But the city insisted that if the entrance were renovated, it would have to be made wheelchair-accessible. There was not enough space for the ramp, but the city would not issue a waiver. Rather than leave the unsafe staircase in place, the owner made the renovation illegally, without city approval.

The law adds between $3,000 and $5,000 per apartment to the cost of new construction, according to Deborah Beck of the Real Estate Board (which has never opposed the ordinance). The board has not done a detailed analysis of costs for gut-renovations, but Beck believes they are comparable or slightly higher. Local Law 58 may also raise rents by reducing the total housing supply: Because the law requires larger apartments in order to accommodate wheelchairs, fewer can be built in the same amount of space.

One doctor, who wanted to convert a house into an office, was forced to install an elevator

For individual owners, unable to enjoy economies of scale or to spread the cost among many tenants, the costs can be devastating. One doctor, who wanted to convert a house in Brooklyn into an office, was forced to install an enclosed elevator shaft to lift wheelchairs to the rear entrance of the building, at a cost of $52,000.

Consider the case of Stan Rubin. Rubin, who spoke on the condition that his real name not be used, bought a one-bedroom co-op apartment in Manhattan in 1989. The unit had been gutted by fire and required a complete renovation. Under the law, his kitchen counters would have had to be made wheelchair accessible, hallways made at least four feet wide, bathroom doors made to open outward, and so on.

In order to meet those requirements, Rubin says, he would have had to widen three archways by several inches to meet the four-foot requirement, forgo installing a bar in front of his kitchen, and lower the kitchen counters. Making his tiny bathroom wheelchair-accessible would have required replacing the bathtub with a shower stall.

Rubin seems an unlikely victim of the excesses of this law. He is blind. As a student at Brooklyn College he fought to make campus buildings wheelchair-accessible. His current company, Peninsula Buying Service, began as a shopping service for the disabled. Nevertheless, he says, "I'm not going to have any government agency tell me where my sink should be or how wide my door should be." He estimated that conforming to Local Law 58 would cost him $12,000. So he broke the law, renovating his apartment without city approval.

The city can grant waivers for renovations in difficult cases. According to Schwartz, waivers are difficult to get "unless you have some kind of inside track politically." This is hardly surprising, since the Buildings Department has delegated responsibility for waivers to the Mayor's Office for People with Disabilities, in effect an officially sanctioned advocacy group for the disabled.

The office is directed by longtime disabled activist Anne Emerman, herself confined to a wheelchair. Before Mayor Dinkins appointed her to her current position, Emerman was legislative vice president of Disabled in Action, the advocacy group that led the crusade for Local Law 58. Emerman says the law's passage was largely the result of a threatened lawsuit by the group.

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Emerman does not see handicapped accessibility as a matter of social costs and benefits, but as a moral imperative, a "civil right . . . to have the same kind of access to the benefits as well as the responsibilities of society as nondisabled people," a view she says Mayor Dinkins shares.

Emerman is a living example of how enlightened American society has become about the disabled. Charming, well-spoken, fiftyish, and extraordinarily capable ("It takes about five people to fill her shoes," says a former colleague at Disabled in Action), Emerman was crippled by polio at age seven. "Fourteen years of my disabled life were spent in a chronic-care institution," she recalls. She speaks with great conviction of the "tremendous waste of a whole lot of people" confined to institutions in decades past because they could not function in a society that made no allowance for their needs. "It's been a civil rights movement with disabled people to get the physical environment changed."

No matter how much this costs, any lesser accommodation to the needs of the disabled is unacceptable. Emerman was a plaintiff in a lawsuit filed by Disabled in Action during the Koch Administration, demanding that the city make polling places accessible to people in wheelchairs. "We forced the mayor to put $10 million into the budget," she says proudly.

Is this necessary? If you are unable to use the polling place, why not just file an absentee ballot? "I am not absent, I am not on vacation, I am part of my community," Emerman replies. "I felt very strongly that the issues of disabled people were never going to be taken seriously unless we were perceived as voters."

The passage of Local Law 58 belies the notion that the interests of the disabled—or at least of organized advocates for the disabled—are not taken seriously. Since Local Law 58 was passed, the Department of Buildings has set up a task force consisting of representatives from disabled advocacy groups, city agencies, real estate interests, and architects to negotiate, debate, and issue recommendations about how Local Law 58 should be amended and administered. Because the task force is merely an advisory board, its monthly meetings are not open to the public. But in practice, its recommendations are generally followed, since they represent a consensus of competing interest groups. Thus the debate that should have taken place in public before the law was passed has been superseded by closed-door negotiations between interest groups.

The task force, however, will never address the fundamental issue: Are the costs of mandating universal accessibility worth the benefits? It is worth noting, for instance, just how few people actually are confined to wheelchairs. According to data from the 1980 census, 720,000 Americans were wheelchair-bound: less than one-third of 1 percent of the total 1980 population. If the city's proportion is equivalent, there are roughly 22,000 wheelchair-bound New Yorkers. Surely there are more compassionate ways to meet their needs than Local Law 58, which raises the cost of housing for all seven million New Yorkers while putting an unconscionable burden on hundreds of thousands of small property owners struggling to maintain New York's decaying housing stock.

Advocates for the disabled argue that as society becomes demographically older, the proportion of disabled people, and hence the need for wheelchair accessibility, is bound to increase. Even so, a more cost-effective approach might be to offer subsidized renovations, as needed, for dwellings actually occupied by the disabled, ensuring that their needs are met without imposing enormous costs on the rest of society.

—James Taranto

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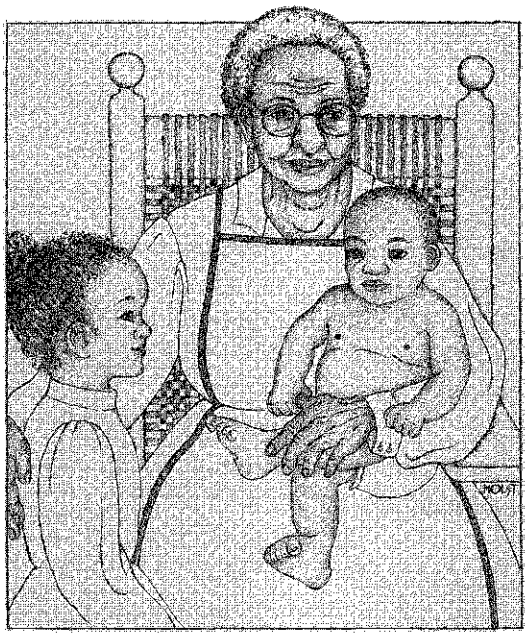
Foster Care as Welfare

Over the last four years, New York City's foster care system has been transformed by an apparently simple and appealing innovation called kinship foster care. This new initiative now threatens to turn a vital child-protection service into a supplementary welfare program, squandering resources meant for profoundly troubled families, marooning children in foster care far longer than is appropriate, and threatening the integrity of the system itself.



The new program, called kinship foster care, is simple in principle: Instead of placing abused or neglected children with strangers, the city searches for relatives—usually grandmothers or aunts—willing to care for them. The city inspects and certifies these relatives' homes, provides social services, and oversees the children's welfare. In turn, kinship foster parents receive the same financial support as regular foster care parents.

What sounded simple in theory, however, has turned out to be problematic in practice. Kinship care has been one of the driving forces behind explosive changes in the size and nature of the system. In 1986, there were 16,000 children in foster care, 90 percent of whom were under the supervision of private agencies. Today there are almost 50,000 children in foster care, nearly half in programs run directly by the city, and payments to foster care parents have nearly tripled to $790 million. (About a third of that comes directly out of the city's pockets, with federal and state aid supplying the rest.) And while the number of children in regular foster homes has increased by more than 50 percent since 1987 (the first full year of the kinship program), the number of children in kinship homes rose more than 400 percent, from about 4,000 to more than 21,000 today, more than there were in all of foster care five years ago.

"No one expected this at all," notes William Grinker, commissioner of HRA during the Koch Administration. "The estimates were that there would be at most only 1,000 families involved." Most troubling, many more of today's foster kids, especially those in kinship care, appear to be staying in foster care indefinitely, without much prospect of either reunification with their parents or permanent adoption.

Kinship care grew in part because the need for foster care increased with an epidemic of drug use among women of child-bearing age. The boom in crack babies created the "boarder-baby" scandal of the late Eighties, in which newborns remained in hospitals, or were crowded into makeshift dormitories, while awaiting foster care placement. To resolve the boarder-baby crisis, the city raised foster child payments for newly placed children by making many more of them eligible for the "special services" rate of more than $800 per month per child. At the same time, however, under threat of a lawsuit filed by the Legal Aid Society, the city issued new regulations guaranteeing kinship foster par-

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ents the same payments as other foster parents. With powerful incentives in place, the number of children in kinship care began to rise quickly.

Many of the crack babies brought two or three older siblings into foster care at the same time. That might seem like a reasonable outcome, except that in many cases the children had already been living with the relatives. As Grinker notes, the city began "creating a system that pays families for doing what they were already doing anyway." Though "grandfathering" is forbidden by federal regulations, the Task Force on Permanency Planning noted that in 39 percent of the cases it studied, children had been placed with relatives before entering foster care; in 12 percent of the cases, children had been living with relatives for a year or more before becoming foster kids.

Kinship care became, at least in some cases, "a backdoor way to raise welfare," according to Grinker. For even though the city has tightened up eligibility for the "special services" rate, regular foster care rates are much higher than the payments for which most kinship guardians would otherwise be eligible under the Aid to Families with Dependent Children program. The allowance for each child under AFDC is roughly $110 per month, far less than the minimum of $386 a month available to foster parents. In the task force study most kinship guardians had four or more children under their care. A working grandmother caring for four school-age grandchildren would be eligible for only $440 a month from AFDC, compared to a minimum of $1,820 a month under the kinship foster care program, plus $1,636 a year clothing allowance. For teens, the grandmother receives $526 per child, while the "special services" foster care rate pays $845 per month per child.

An extra $2,000 or so a month in tax-free income is not pin money by anybody's standard. Word began to get out on the street, and judges began to notice a rising volume of foster care cases in which money, rather than protection, appeared to be a prime motive for keeping the kids in foster care. "I notice many cases where the kids have been in placement for a year or two, and the mother has already done everything the agency asked," notes Judge Susan Larabee of the Bronx Family Court. "The caseworker can't articulate any reason why the mother is a danger to the children. But the children's lawyers are the ones asking for them to remain in foster care, and they are quite frank: It's the money." Larabee, who handled 351 neglect and abuse cases in the first three months of 1991, estimates that she sees cases involving questionable use of kinship care at least once a week, and sometimes more. "It's naïve to think people won't try to get more money for their families," she maintains.

No one knows how many children were illegally grandfathered into the program nor in how many cases mothers and grandmothers may be living together and still collecting kinship Foster Care, but Judge Larabee is not the only family court judge to notice the problem. One Manhattan judge told the task force the story of a 14-year-old girl in kinship placement. The social workers maintained that the grandmother had said the mother had disappeared. When the judge interviewed the child in chambers, however, a different story emerged.

"Do you care for your mother?" the judge asked.

"Yes," the teen answered, "I love my mother a lot."

"Do you ever see your mother?"

"Yes!" the girl answered, "Every day. My mother lives with my grandmother."

In another case, a drug-exposed infant was born; its 13-year-old sister had lived with the grandmother all her life, but the

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neglect petition for foster care was drawn for both children.

Kinship care appears to discourage either of the two statutory goals of a foster care case: family reunification or adoption. In a New York State Department of Social Services report, Fred Wulczyn noted that 88 percent of children placed in kinship foster homes in 1987 were still in foster care two years later, compared to only about 40 percent of children placed in regular foster homes. High payments may be discouraging mothers who ought to reclaim their children from doing so. "With welfare, we drove fathers out of the home," says Grinker. "Now we are going to drive the mother out, too." But when kinship kids remain in foster care indefinitely, they drive up costs and divert resources from kids who genuinely require the temporary protection foster care was meant to provide.

"With welfare, we drove fathers out of the home, now we are going to drive the mother out, too," says Grinker

Moreover, caseworkers are reluctant to push for adoption in kinship cases. Caseworkers are required to set goals for foster children every six months. Among kinship kids, according to the Task Force, the most common goal was return to parent, and this goal was continued year after year, even in cases where the mother had disappeared or was incarcerated long-term, although the law requires that after two years the goal be changed from return to parent, to adoption. "Agencies don't try to get these kinship kids a home, because the caseworkers consider them already 'at home,'" agrees John Courtney, assistant executive director for foster care at Little Flower Children's Services, one of the largest private foster care agencies in the city.

The conventional wisdom is that Grandma will not want to get involved in proceedings to cut off her daughter's parental rights. But Judge Larabee disagrees. "I've done a number of kinship adoptions. I think many relatives would be willing to adopt with good social work." According the Task Force report, "Although people asserted frequently that bias against the adoption of relatives' children is a cultural issue, the caseworkers had explored adoption in a few cases and found relatives willing to adopt, if it became a possibility." The many grandmothers who have themselves been abused by their addict daughters might be more than willing to cooperate with authorities and pursue adoption in order to protect their grandchildren.

No one appears to know exactly how much kinship care costs the city: Budget practices make it almost impossible to determine how much of the Child Welfare Agency's adminsitrative and personnel costs could be attributed to the program. Over the long run, the costs will spiral, eating up an ever larger share of the foster care budget, because children remain in kinship foster homes much longer than in regular foster care. The misuse of kinship foster care diverts the Child Welfare Agency's manpower and administrative resources from children genuinely in need of the city's protection.

If the Child Welfare Agency made it a policy to encourage kinship guardians to adopt, many of the problems raised by the program might be resolved. The city would be relieved of the administrative burden of following thousands of cases in which children had found adequate homes with relatives, leaving more time to supervise other kids and guardians in the system. And though the savings to the city would be

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great, the financial penalty for many of the guardians would not be high: After kids have been in foster care 18 months, they qualify, as hard-to-place children, for subsidized adoptions at three-quarters the foster care board rate.

Adoption would also remove these children from the custody of the commissioner of HRA, transferring full authority for education and medical decisions to the relatives, where it belongs, and force families toying with the foster care system for their own purposes to fish or cut bait.

Misuse of kinship foster care is difficult to detect. There is nothing to stop a young woman from going to court, telling the judge she cannot care for her child, placing the child with her mother, living at home, and splitting the proceeds, or at least enjoying the benefits of a higher standard of living. Nothing, that is, except the integrity of the foster care system, which is being stretched by compassionate social workers, lawyers, and judges anxious to help low-income families. By failing to enforce regulations for kinship homes and routinely extending kinship care, the Child Welfare Agency encourages relatives to view kinship foster care as primarily an income-supplement program—an offer of free cash that few families can refuse.

—Maggie Gallagher

Does State Aid Reach the Schools

One of the most common explanations for the inferior performance of New York City's public schools is that the city school system receives less than its fair share of state aid to education, causing the city's schools to be underfunded. According to this view, greedy suburban legislators, in return for supporting overall increases in state aid to education, demand a larger proportion of aid than their districts deserve. Given that the state now disburses more than $10 billion in aid to education, this is a high-stakes political game: The city's Board of Education estimates that its "shortfall" in state aid is $380 million in the current fiscal year alone.

There is some truth to this: The New York City public school system now educates 36 percent of the state's students, yet receives only 32 percent of the state aid to education, even though city schools serve a greater percentage of kids with severe needs than the rest of the state.

A closer look at the data, however, shows that the city's own behavior undermines its claims: In effect, the city has been using a steadily increasing flow of state education aid not for the schools, but to prop up the rest of the city budget while reducing its own commitment to education. If the city's schools are getting less than their fair share, the blame lies with the spending priorities of the city government, not those of the state or federal governments.

Over the last ten years, state aid to the city's school system has increased by more than $1.9 billion, or 150 percent. And while the state has been increasing its support of city schools, the city government has been pulling back. The chart below, drawn from data in the chancellor's 1991 budget request, compares the sources of the city school system's revenues in 1982 and 1991 (all dollar amounts are in millions):

Year	City	State	Federal
1982	$2,026	$1,288	$343
1991	3,303	3,219	682
$ Increase	1,277	1,931	339
% Increase	63%	150%	99%

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Had New York City's contribution to the Board of Education grown by the same proportion as the state's contribution, the city's public school budget would have been $1.7 billion higher in 1991. Moreover, despite all the rhetoric about Washington's abandonment of New York City, had city education expenditures grown only as much as the federal contribution to city schools, the budget would have been $700 million higher in 1991.

In 1983, 55 percent of the school system's budget came from the city, 35 percent from the state, and 9 percent from the federal government. Today, however, the city picks up only 46 percent of the tab, while the state accounts for 45 percent and the federal government still picks up 9 percent.

The shift in percentages is due not only to rising state aid: In recent years, even as the city's local revenues grew at an impressive rate, an ever smaller percentage of those revenues has gone to the schools. Again the chancellor's own budget shows the facts:

Year	School Spending	City Revenues	School Share
1986	$2,640	$12,893	20.5%
1991	3,303	19,510	16.9%

If the Board of Education were capturing the same share of locally raised revenues as it had been only five years ago, its budget would be $690 million higher than it is now.

Over the last ten years, the city government has effectively shifted a substantial share of the school system's costs to the state's taxpayers, while shifting its own resources to other areas. The behavior of the city over two mayoral administrations indicates that increases in state education aid will not even find their way into the school system, let alone the classroom.

Is it any wonder that Albany resists the city's requests for a bigger piece of the pie? It is hardly reasonable to expect suburban legislators to increase what has effectively become a general support program for the city budget. Nor is it surprising that parents who value public education move to the suburbs when their children reach school age. Parents are quite willing to pay higher suburban taxes so their children can go to better schools. Education is the government service they care about most; New York City has other priorities.

The spending gap between city and suburban schools is largely of the city's making. The city chooses to shortchange its schools in favor of other programs, and continues to drive away an important part of the school system's constituency and of its own tax base.

—Raymond Domanico

Notes from Underground

Number of arrests made by Transit Police in 1990: 25,647

Percentage of Transit Police arrests that are for farebeating: 51

Percentage of arrested farebeaters with outstanding warrants: 16

Number of robbery complaints in the New York subway system in 1990: 9,297

Number of robbery arrests: 4,013

Percent change in the number of violent crimes in the subway, first quarter 1990-91: -16

Percent change in the number of arrests by Transit Police, same period: +55

Number of homeless men found sleeping with an M-16 rifle in Grand Central Station: 1

—Compiled by Alan Fenster

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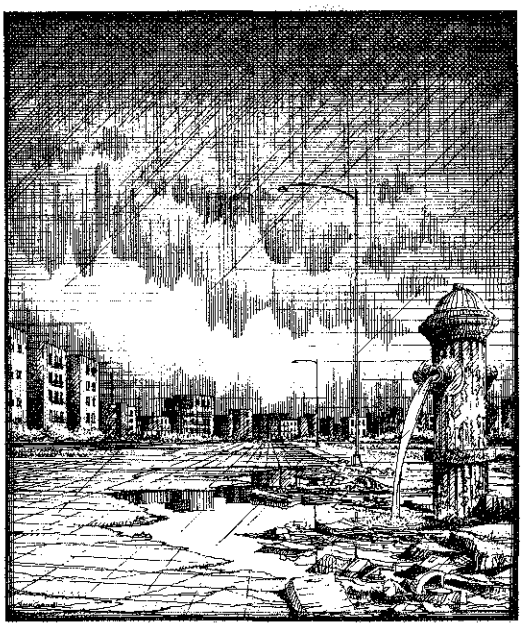
New York's Most Unjust Tax

by Gerard C. S. Mildner

New York City needs a tax revolt, not despite the fiscal crisis but because of it. Although the Dinkins administration is planning to increase property taxes for the second time in two years, in order to raise revenue, that plan is likely to backfire, damaging an already fragile local economy and perhaps even losing revenue. A much surer way to narrow the fiscal gap would be to *cut* property taxes.



New York City's property tax rates, which bring in more than 40 percent of all local tax revenue, are among the highest in the country, especially for apartments and commercial buildings. New York's property taxes are overwhelmingly regressive, destructive of the housing stock, particularly in poor neighborhoods, and burdensome for businesses, especially new ones. Moreover, and perhaps most important in the current climate, New York's high rates actually seem to be costing the city money. There is powerful evidence that New York City property taxes are so high—particularly in poor neighborhoods—that a correctly structured tax cut would increase property tax revenue and other tax receipts as well. In addition, such a tax cut would allow city hall to reduce its own expenditures on housing programs, narrowing the fiscal gap still further.

State law (and long-standing practice) divides all real estate in New York City into four categories—homeowner (one-, two-, and three-family homes), other residential, commercial, and utility—and permits the city to assess and tax each category at different rates. Effective tax rates on New York City's private homes are quite reasonable by national standards. But the city's apartment buildings, which house two-thirds of New York households, and commercial and utility properties are taxed at some of the highest rates in the country. Indeed, in a survey of property tax rates in 22 of the largest U.S. cities, New

Gerard C. S. Mildner is the coauthor (with Peter Salins) of the forthcoming book Scarcity By Design, *an analysis of New York's housing market. A research fellow of the Manhattan Institute, he was recently appointed an assistant professor of the Department of Urban Studies and Planning at Portland State University.*

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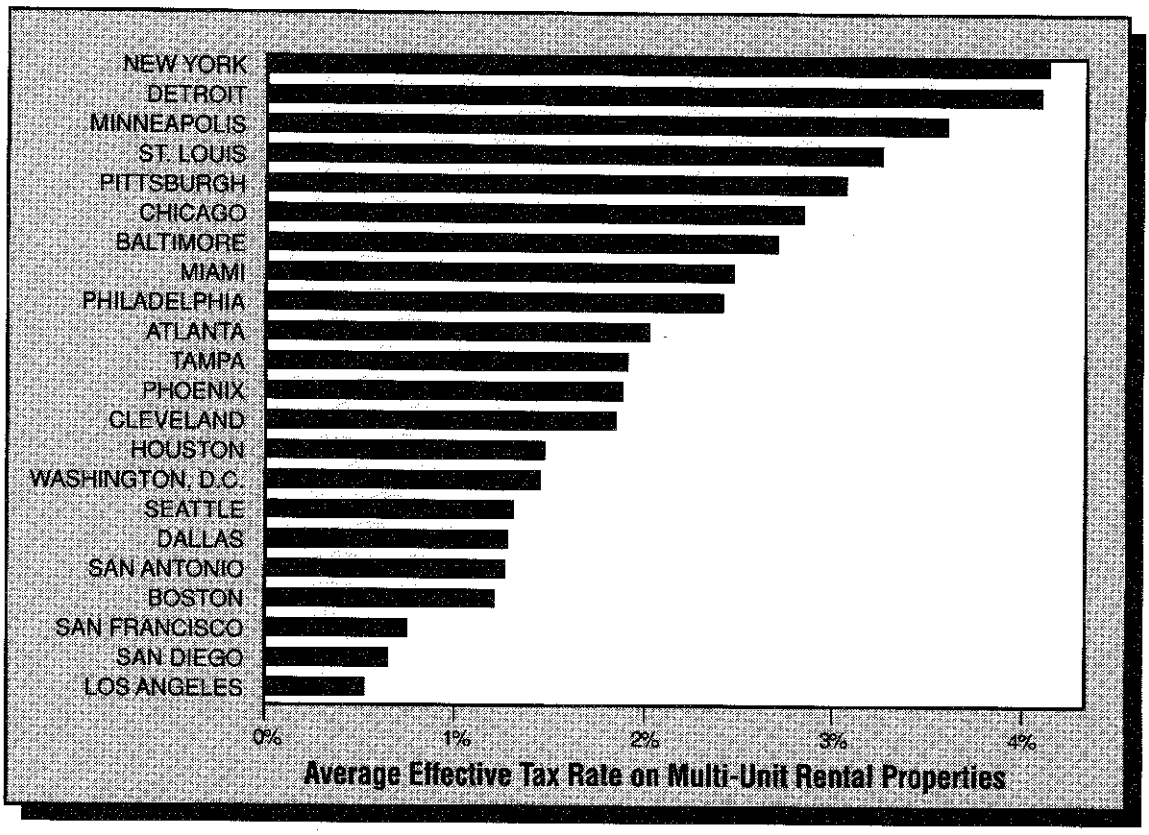
FIGURE 1

New York's Tax Rates on Apartment Buildings Are the Highest in the Nation



Note: Chart based on 1986-1987 data from interviews with state and local tax assessment authorities. The effective rate equals the nominal tax rate multiplied by the assessment rate. Allowances were made for universal homestead exemptions or tax credits, but not for targeted exemptions (for the elderly or the poor, for example) or targeted abatements (for new construction or rehabilitation).

York had the highest rate on apartment buildings (see Figure 1).

Because renters do not see their property tax bills directly, most New Yorkers do not realize how high the city's tax rates are. Figure 2 shows who pays what under the present tax code. The nominal tax rates on the four types of property appear to be roughly equal. But the effective tax rate is a product of the nominal tax rate and the assessment, i.e., the value imputed to the property being taxed. For homeowner properties, the average assessed value is only about 8 percent of official market value, while the assessment rate on all other properties is roughly 50 percent. As a result, the other property classes pay six times as much as homeowners. Suppose, for example, you owned a home worth $100,000 according to the city's books. On average your assessed value in New York City would be $8,340. At your nominal tax rate of 9.43 percent you would owe the city $786. But if that same building were an apartment house, your assessed value would be $52,240, and your tax bill would come to $4,800. If your building were a commercial property, you would owe somewhat more. And these figures do not take into account Mayor Dinkins's planned tax increases, which would raise effective tax rates even further.

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Taxing the Poor

Even under well-designed systems, the property tax tends to take a greater share of the income of the poor than of the rich. New York, however, has pushed this tendency to such an extreme that the property tax loses money in poor neighborhoods.

The poor spend a greater proportion of their income on housing, so passed-along property taxes, usually in the form of higher rents, cut more deeply into their budgets. (Most economists agree that landlords pass most of the property tax along to their tenants.) New York's system, however, is exceptionally regressive. We tax apartments much more stiffly than private homes, and the poor are almost all renters.

A detailed look at the data confirms that New York's tax system punishes the renting poor. Economist Howard Chernick of Hunter College recently conducted a study matching New Yorkers' household incomes to their property tax payments. In this study, published in the 1988 volume of Setting Municipal Priorities, Chernick found the property tax to be much more regressive than other local taxes, including the sales tax. In 1986, New York households with an income of $5,000 to $10,000 paid more than 8 percent of their income in property taxes, while those with an income of $75,000 to $100,000 paid just over 1 percent (see Figure 3). Chernick identified several causes of this extreme regressivity, but most important was the high effective tax rate on rental property.

Moreover New York, like many cities, seems to overestimate the market value of properties in poor neighborhoods, which in turn inflates the assessed value of a property (the product of the assessment rate and the estimated market value) and the final tax bill. Several nationwide studies confirm this tendency. A team of four economists who designed a study for the federal Department of Housing and Urban Development (HUD) found that overestimates of market value caused assessments in poor neighborhoods to be relatively higher than in richer neighborhoods in six of 10 selected U.S. cities, with only one city showing an opposite trend. A recent study of Class I property by the New York Public Interest Research Group found that three-family homes were overassessed by between 26 and 41 percent relative to one- and two-

FIGURE 2
New York's Property Tax Rates

PROPERTY	Nominal Tax Rate	Average Assessment Rate	Effective Tax Rate *
Class I. Homeowner	9.43 %	8.34%	0.79 %
Class II. Apt. & Other Residential	9.19	52.24	4.80
Class III. Utility	11.65	44.62	5.20
Class IV. Commercial	9.59	50.11	4.81

* Effective Rate = Nominal Tax Rate X Average Assessment Rate

Source: New York State Board of Equalization and Assessment. These figures are based on the average nominal tax rates and assessment rates for the years 1986-1990.

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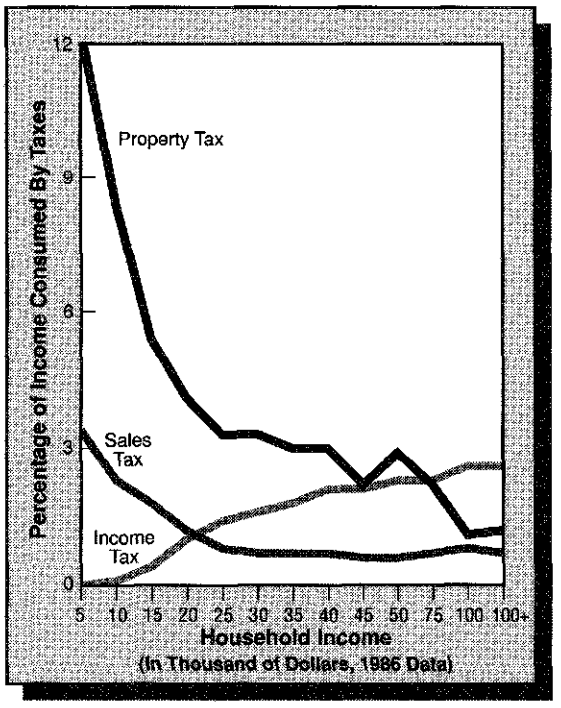
family homes, with particularly high assessments occurring in the poorer neighborhoods of the city.

This problem seems to be worse than average in New York. Assessments were dramatically skewed during the 1970s, when the city's depressed economy and the combination of rising energy costs and the constraints of rent control depressed the value of many buildings in poorer neighborhoods. New York City landlords in poor and moderate-income neighborhoods were overwhelmed by the combination of rising costs, worsening social conditions among their tenants, and stagnant or falling rental income. Under these circumstances, assessments should have been cut dramatically, since the value of a building is a function of its post-tax profits. A building that can only lose money is effectively worthless, and might as well be abandoned by its owner. That is just what happened. Thousands of landlords, faced with mounting tax bills they could not pay based on unreasonable and rarely adjusted assessments, cut back on maintenance and eventually just walked away from their buildings. From 1974 to 1984, more than 300,000 rental units were abandoned; some of the buildings were burned, apparently for the insurance money. Most of the rest fell into the hands of the city, which seized them for unpaid taxes.

As a result, the city government acquired a growing number of abandoned properties, under what came to be known as the *in rem* management program. The city currently has roughly eight thousand such buildings. Almost half are completely vacant. As city property they pay no taxes. Their operation and maintenance costs the city over $180 million each year. And though abandonment and *in rem* seizures slowed during the 1980s, in the current economic climate, with no tax relief in sight, abandonments are beginning to rise again.

Yet this very combination of tax delinquency, abandonment, and *in rem* seizure suggests that a tax cut could increase revenues and reduce costs, improve the housing stock, and help the poor. Reducing taxes would reduce abandonment and keep buildings on the tax rolls and out of the city's expensive *in rem* program. Several studies, local and national, support this view. In the HUD study cited earlier, the authors concluded: "The higher rate of property taxation in blighted neighborhoods has done much to drive up operating costs and depress housing prices," suggesting that taxation can be a major burden to landlords in poor neighborhoods. Similarly, Rutger's University economists George Sternlieb and Robert W. Lake, writing in the *National Tax Journal*, found in a study of Pittsburgh that severe property tax bias

FIGURE 3
The Property Tax is the Most Regressive Tax



Source: Data from Howard Chernick, *Setting Municipal Priorities, 1988.*

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was a significant burden on the housing stock in poor neighborhoods.

Most important, in a detailed study of New York City's property tax system and housing abandonment, University of Michigan economist Michelle J. White confirmed that a tax cut would reduce abandonment and raise revenues. Using data from 260 New York City neighborhoods in 1976 and 1978, White conducted a regression analysis to test a variety of possible explanations for high rates of tax delinquency. The variables, or possible explanations, that she tested included the age of buildings, the income of neighborhood residents, the percentage of residents on welfare, the percentage of single-family homes, and the percentage of tenement-type structures.

None of these variables, however, explained the rate of tax delinquency as well as a single other factor: effective tax rates. According to White, a 10 percent increase in the property tax bill was associated with a 21 percent rise in the rate of tax delinquency. Of course in prosperous or stable neighborhoods, where the delinquency rate is low, a 21 percent rise would have a minimal effect on city revenues. An increase in the delinquency rate from 1 percent to 1.21 percent would not mean much lost revenue. But in slum neighborhoods where a large percentage of buildings are already delinquent, the implications are more dramatic. If the delinquency rate is already 20 percent, the same 10 percent tax increase will increase the delinquency rate to 24.2 percent. That will cost the city treasury a lot of money. If the delinquent buildings are seized *in rem*, this cost will grow: The cost of subsidizing an *in rem* building was estimated at $13,900 in 1978, the year from which White drew her data. It has more than doubled since.

White then hypothesized a policy of reducing assessments by $1,000 per building in a typical poor, minority neighborhood: Brownsville, Brooklyn. Since assessments of all properties in the neighborhood at the time averaged about $17,000 per building, this amounted to a 6 percent reduction in the assessment. With a nominal tax rate of 9 percent, the city would lose $90 from each of the twelve hundred buildings in the neighborhood, or approximately $109,000 per year (in 1978).

As a result of this tax reduction, however, tax delinquency would fall by 12.6 percent. Sixty fewer properties would consequently go into delinquency, and the city would gain back some 80 percent of what it had "spent" on the tax cut. Furthermore, without the tax cut, roughly one-quarter of these sixty delinquent buildings would have ended up in the city's *in rem* program at a cost of $208,000 per year for 15 buildings. So the tax cut, by keeping those properties out of *in rem* management, would save the city treasury an additional $208,000 per year.

Thus in 1978, the original $109,000 "spent" in tax cuts would have produced a total "payback" of $294,000, a benefit/cost ratio of 2.7 to 1, and a net gain to the treasury of $185,000. In 1991 dollars that figure would be far higher. Yet even these figures underestimate the ultimate savings. For when the city eventually does recycle seized properties back into the private sector, it almost always gives the new owners tax subsidies or even grants to rehabilitate these structures. The city's current $5 billion, 10-year housing plan consists mostly of such rehab subsidies. A property tax cut that forestalled abandonment in the first place would render much of that spending unnecessary (much of the damage occurs after abandonment) saving the city hundreds of millions of dollars a year (see Figure 4).

Property taxes, thus, seem to be subject to a local "Laffer curve": The city would gain more from having a larger property tax base and smaller *in rem* subsidies than it would lose by reducing property tax rates, at least

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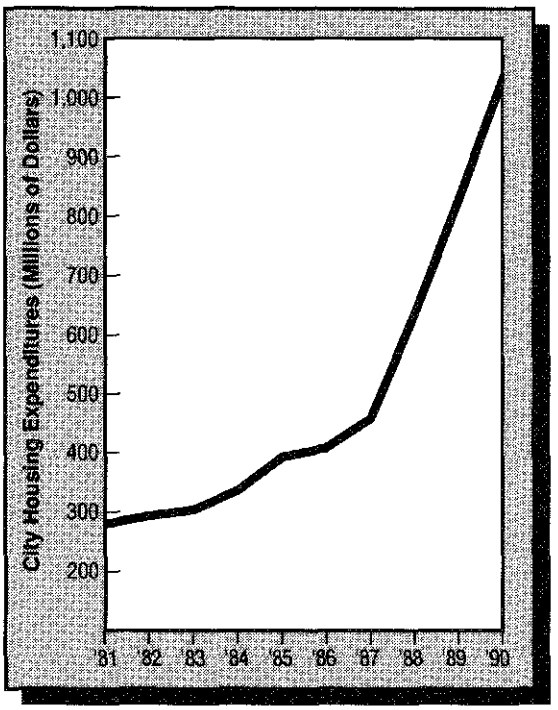
FIGURE 4
The Growing Costs of New York City-Sponsored Housing



Source: NYC Comptroller's Report for Fiscal 1990.

Expenditure figures represent the annual combined capital and operating expenditures of New York City's Department of Housing Preservation and Development.

in poor neighborhoods. There are, however, two big differences between this local Laffer curve and the national Laffer curve for income taxes, hypothesized by the "supply-side" economists: First, for New York City's property tax, the mechanism by which the tax-cut payback is produced is clearer and easier to verify in advance. Second, the payback is much bigger. While the national income tax cuts of the 1980s produced a payback of only two-thirds, thus increasing the national deficit, a property tax cut in New York City, at least in poor neighborhoods, would produce a payback of almost 3 to 1.

Because White limited the latter part of her analysis to poor neighborhoods, we do not know without further study whether a general tax reduction on all residential apartment buildings, or indeed on all Class II, III, and IV properties, would produce a similar payback. The city, however, could immediately launch a targeted and highly profitable tax cut by reducing assessments in poor neighborhoods. Meanwhile, the city should study the revenue effects of a broader tax cut for Class II, III, and IV properties in all neighborhoods.

Even without such a study, however, there are a number of reasons to believe that a broad-based city-wide property tax reduction could boost the local economy at no cost to the treasury. To begin with, abandonments, which slowed during the 1980s, seem to be on the rise again. This stands to reason: The costs of operating an apartment building in New York have risen substantially in recent years, largely because of taxes. According to a study commissioned by the Rent Stabilization Association, but using techniques designed by the Bureau of Labor Statistics, real estate taxes now account for 23 percent of the operating costs of rent-stabilized apartment buildings, up from 18 percent in 1985. The real estate tax component of the price index for operating costs for such buildings has risen by double digits for three straight years. With abandonments and taxes rising, White's scenario of increasing revenues by cutting taxes and forestalling abandonment seems especially likely to be valid today.

Moreover, a tax cut could justify the elimination of one of the most costly and least productive of city tax policies: the granting of special property tax reductions or "abatements" to keep businesses or developers here. In recent years such tax abatements have reduced property tax revenues by roughly 14 percent. Tax abatements make it easier for city officials to influence investment decisions (a job they are unlikely to do well) and encourage waste, favoritism, and even corruption. When tax subsidies are

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available, almost any business with sufficient clout can be expected to claim that it needs one to stay in town. Ultimately, the city is forced to grease all the squeaky wheels.

This problem is largely a function of the city's high tax rates. Simple arithmetic suggests that eliminating abatements would enable the city to cut property taxes by 14 percent without harm to the treasury. In fact, eliminating abatements would leave room for an even larger tax cut. We know that there would be a very substantial "payback" in poor neighborhoods; it is reasonable to suppose that there would be at least a modest payback in other neighborhoods. Eliminating tax abatements might therefore allow a tax cut not of 14 percent but of 15 or even 20 percent. Of course since many existing abatements are guaranteed for a number of years the change would have to be gradual.

None of these calculations takes into account a property tax cut's beneficial effect on the broader economy, which might be the most important result, even for the city treasury. New York has a broad array of taxes, many of which, like the income and sales taxes, are sensitive to the state of the economy. If a property tax cut should prompt a local recovery, revenues from those taxes would rise sharply.

Would a property tax cut help the local economy? There is every reason to think so, although such broader positive effects cannot be quantified with any precision.

Traditionally, of course, the property tax has not been regarded as an economically sensitive tax: That is, reductions and increases in the tax have not been seen as crucial factors in the state of the economy. Property—unlike a business or an individual—cannot leave town to escape high taxes. Thus, public finance economists long assumed that the owner of a property accepted his loss as unavoidable, paid his tax, and made the same marginal decisions as before.

In more recent years this consensus view has been challenged by economists. For instance, many now believe that developers do respond to high tax rates, locating new construction in neighboring towns or competing regions should local property taxes get too high. Certainly this is most likely to occur when property taxes have reached extremes as in New York.

Far more important, it is becoming clear that high property taxes harm not only new development but the entire economy. Writing in *The Review of Economics and Statistics*, Jay Helms, an economist at the University of California at Davis, found that the property tax had strong negative effects on a state's growth in personal income. Or as Duke University economist David Davies reported in *United States Taxes and Tax Policy*, an important recent study: "High [property] taxes tend to increase the prices of goods and decrease real wages." Thus, excessive property tax rates may harm living standards and job growth.

There have been two dramatic empirical tests of this proposition in recent years: the property tax revolts in California and Massachusetts, in 1978 and 1980 respectively, both of which were followed by economic booms. It is, unfortunately, impossible to determine precisely how much of that growth is attributable to the tax cuts. But the power of the post-tax-cut surge in both those states, and the growing belief among economists that property taxes are linked to economic growth, should give pause to high-tax states such as New York.

In Massachusetts, where the property tax rate previously averaged 4.4 percent, the passage of Proposition $2^1/_2$ in 1980 set a 2.5 percent maximum rate cap for any individual piece of property. California's Proposition 13 reduced average property tax rates from 2.47 percent to 1.20 percent with strict ceilings on assessment increases.

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In the four years before Proposition 13, California produced one-sixth of the new jobs in the United States. Yet in the two years following, the state produced one-third of the nation's new jobs. From 1975 to 1984, the number of jobs increased by 25.5 percent in Massachusetts and by 34.5 percent in California, compared with gains of 22.5 percent in the rest of the country and only 10.6 percent in high-tax New York State. Compared with the rest of the nation, the much-vaunted New York recovery was little more than a return from the dead. Perhaps the time for a real New York recovery is now.

On the downside, in both California and Massachusetts local property tax revenues declined, taking several years to recover. Other tax receipts rose, of course. California and Massachusetts, however, cut property taxes for everyone, including homeowners. In New York City, a tax cut could be targeted to multifamily dwellings and commercial buildings, which are much more likely than homeowner properties to produce a revenue payback. Homeowners are not overtaxed in New York City.

New Yorkers might be surprised to hear that we already have a constitutional property tax limitation: The state constitution restricts New York City's property tax levy to 2.5 percent of the "full value" of its property tax base. But constitutional loopholes and the division of property into four classes makes this provision completely ineffective.

The 2.5 percent limitation does not apply to individual properties but to the tax base as a whole: It is no barrier to effective tax rates of 4 to 5 percent on apartment buildings and business properties. Furthermore, the constitution exempts from this limitation whatever amount of revenue is needed to pay the city's long-term debt: In order to raise taxes all the city need do is be fiscally irresponsible, a task it can certainly manage.

A major impediment to real tax reform is politics: renters do not see their tax bill so don't care about it. Homeowners do, but they have a good deal. For this reason, any package of property tax reduction and reform must leave the present low tax rates on one-, two-, and three-family homes intact. The effective tax rate for homeowners here is quite low, but not much lower than the rates in Boston or Washington, D.C., or the major cities of California and Texas. Rates for other properties should be reduced by a more effective constitutional tax limitation on individual properties, not the tax base as a whole.

One way to do both these things would be to leave the class system intact, but apply the current constitutional limitation of 2.5 percent of full value to all properties individually. Because the 2.5 percent (or whatever figure were agreed on) would be a maximum, tax rates on homeowner properties could remain at their current low level. Establishing the correct maximum level would take a bit of study, since the city cannot afford a big revenue loss now. Of course the fiscal irresponsibility loophole, by which the city gets to raise taxes if it runs up enough debt, must be closed—especially since the city's debt has risen in 11 of the last 12 years.

Correctly designed, such a reform would do little or no damage to the treasury in the short term, and pay dividends very soon: more housing with fewer city subsidies, especially in our poorer neighborhoods; a less regressive tax system with lower effective tax rates for the poor; lower rents for people and businesses; higher disposable incomes; more jobs; increased revenues from sales, income, and other taxes.

In the short term, of course, a more selective cut would certainly produce an immediate revenue payback. We need both short-term tax reduction, especially in poor neighborhoods, and long-term reform. No other major American city has property tax rates as high, as destructive, as inequitable, or as ill designed as New York's. Few places have more to gain by change. ■

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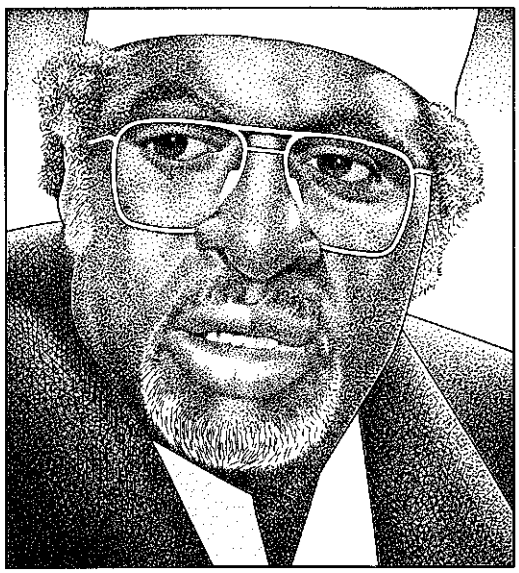
Sonny Carson and the Politics of Protest

by Tamar Jacoby

Sonny Carson makes no apologies for his racial politics. He likes to be thought of as a bad black man, someone who can hold his own fighting the white man's power. As a youth, he was a defiant gang member. Later, on trial for kidnapping and murder, he cultivated the image of a ruthless militant. Most recently, during the last mayoral campaign, he tweaked New Yorkers' noses by declaring proudly that he was "antiwhite." A self-styled troublemaker with no visible political base, he has made no effort over the years to disguise his faith in the politics of intimidation. Yet for more than two decades, he has been an important presence on the New York political scene, consistently embarrassing and outmaneuvering far more distinguished black leaders like David Dinkins. How he does it, the source of his shadowy power, is one of the most potent secrets of New York politics.



Carson is not the best known or even the most disruptive of New York's freelance black "activists," but he has proved to be the most painful thorn in David Dinkins's side. Their names were first linked in the public's mind in August 1989, just weeks before the Democratic primary that pitted Dinkins against Mayor Edward Koch. The Bensonhurst slaying of black teenager Yusuf Hawkins had set even the city's jaded nerves on edge and had given Dinkins, who was promising to deliver racial harmony, a considerable advantage among both black and white voters. Then, on August 31, downtown Brooklyn erupted in a bloody racial free-for-all.

Carson led an angry but disciplined column of 7,500 demonstrators marching six abreast, brandishing placards and chanting rhythmically: "Whose streets? Our streets! What's coming? War!" At the foot of the Brooklyn Bridge, the demonstrators met a heavily armed police guard determined to prevent them from blocking traffic. Carson defiantly breached the police barrier and a 20-minute battle ensued. Forty-four cops and unnumbered protesters were injured, several of them seriously. But

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Tamar Jacoby was formerly on the staffs of Newsweek *and* The New York Times, *and is writing a book on whatever happened to racial integration.*

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the biggest casualty, most New Yorkers agreed, was the promise of Dinkins's candidacy. How could Dinkins deliver racial peace with a man like Carson gesturing menacingly behind his back?

Dinkins has been struggling ever since to find a way to live with Carson and the shadow he casts. About nine weeks after the Brooklyn demonstration, in the middle of a close mayoral race, it emerged that shortly after that melee Dinkins's campaign had paid Carson $9,500, supposedly to help get out the vote in Bedford-Stuyvesant. Skeptics charged that the money was simply a payoff, "insurance" against future Brooklyn marches. Within days, the press revealed that Carson's putative campaign organization was nothing but a shell—without an address, telephone, or members. Under pressure, Dinkins's people admitted that they had made a mistake, but still the candidate did not repudiate Carson. Then, with the papers still full of the payoff story, Carson called the press conference and made his remarks about being "antiwhite." Only then did Dinkins publicly distance himself—not, for many white voters, any too persuasively.

Anyone who doubts Carson's power need only canvass the city's other prominent black men, both elected leaders and those outside government. The first and most striking clue about his reach is the hold he seems to have on what others are willing to say. Even on the phone, most simply will not talk about him, on or off the record. The few who break the taboo are generally admiring, aware of some excesses and often careful with their words, but largely in agreement about Carson's central role. "If he did not exist, we would have to create him," says Wilbert Tatum, publisher of the Amsterdam News, the city's largest-circulation black newspaper. "He cannot be dismissed as someone blowing in the wind. He represents a significant number of people." What is more, Tatum explains, "militant" as Carson is, "he often reflects the thinking of those at the center. The difference is that he will venture where our other leaders fear to tread." State Senator David Paterson says almost exactly the same thing: Carson is "a flamethrower," Paterson explains, "and often that is what it takes to get some attention." The young senator, who grew up in the bosom of the city's black political establishment, has some doubts about Carson's methods, but he easily dismisses his qualms. "In a community under siege, everybody has their role. There are jabs and there are knockout punches, and often the jab sets up the knockout punch."

Members of the Dinkins administration are more guarded—and more critical. But they too attest, sometimes unwittingly, to the power Carson wields. Mostly, they too want to change the subject: "Focusing on Carson is a mistake," says one official at the city's Commission on Human Rights. "Let's move away from the cult of personality," echoes another. No one in the administration wants to talk about Carson's involvement in the mayoral race. Nor has Dinkins unequivocally repudiated the race-based boycott, organized by Carson and others, of two Korean groceries in Flatbush. For months, as protesters blocked the stores, haranguing blacks not to shop with "people who don't look like us," Dinkins watched, silent and stalling. The mayor did make one well-publicized speech rejecting the boycotters' tactics in general terms. But only under great public pressure did he finally drive out to Flatbush to buy a few groceries from the Koreans. What's more, to this day his administration holds that the boycotters' demands—and their racial economic jealousies—are essentially legitimate.

City hall maintains that Carson played only a supporting role in the boycott, amplifying and exaggerating positions held by people from "the community." "I don't think

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Carson is representative of the folks carrying out the boycott," says Commissioner Dennis deLeon, who spent months trying to resolve the dispute. Why then didn't the city repudiate Carson and his racial rhetoric? Says deLeon: "We didn't want to raise his status." Nevertheless, deLeon and other officials concede, Carson somehow managed to take over the dispute, making it his in myth if not in fact. "The widespread opinion," says deLeon, "was that it was Sonny Carson's boycott, and that became the reality." Not only that, commission aides admit, but Carson made it far more difficult—in fact, impossible—to resolve the matter. When his people refused to negotiate with the city, one official reports, "no one else in the community was willing to meet with us. No one was willing to go around the leadership."

More telling still, the city itself has all but adopted Carson's race-based view of what was at issue in Flatbush. "There are two communities emerging here," says one aide, "and striving for similar pieces of the pie. These are legitimate issues that have to be resolved." Like Carson, the city now sees the ghetto grocery business as a contest not among individual merchants but between warring ethnic groups. Taking this economic nationalism to its logical extreme, the administration has even embraced the notion that black neighborhoods have a right to set conditions for ethnic outsiders who ply their trade there. The administration does not attribute these ideas to Carson—on the contrary, it claims these are "the community's" demands—but in fact his agenda has completely carried the day.

Carson himself is jubilant about the outcome of the boycott. He dismisses critics who say it has accomplished nothing. Never mind that the picketed storeowner has been vindicated in court, cleared of protesters' charges that he assaulted a Haitian shopper. Never mind that the boycott has done little to help black merchants find a toehold in the ghetto. Carson feels the effort was an unqualified success, largely because it "provoked a coming together in the black community unequaled in decades." He shrugs off charges that the action was merely expressive, disruption for disruption's sake. For him, it was highly effective consciousness-raising: "We got the attention of our people," he says, "people who may not have been aware of the kinds of things that happen when aliens move into our community and disrespect us." Convinced that the city's blacks are now overwhelmingly behind him, he insists that Dinkins "lost face" among them when he finally went out to Flatbush to shop. "I am arrogant," Carson boasts, "as to the power we expressed on that avenue in the past year."

Like Carson, the city now sees the ghetto grocery business as a contest between warring ethnic groups

Why can't Dinkins simply denounce Carson? Not, it seems, because blacks cannot criticize other blacks; Carson criticizes Dinkins all the time, saying that his mayoralty "stinks" and that he is a "figurehead" with no black backing. Yet apparently the criticism can only go one way: Radicals can vilify moderates, but not vice versa. It is a code that Carson knows well; he has been living it for over 25 years. A self-proclaimed "revolutionary," openly driven by racial spite, he not only is radically separatist in his beliefs, but has relied on tactics over the decades—overt threats and violent confrontations with police—that have often put him outside the realm of what most people consider acceptable in politics. Still, many whites—and moderate blacks like

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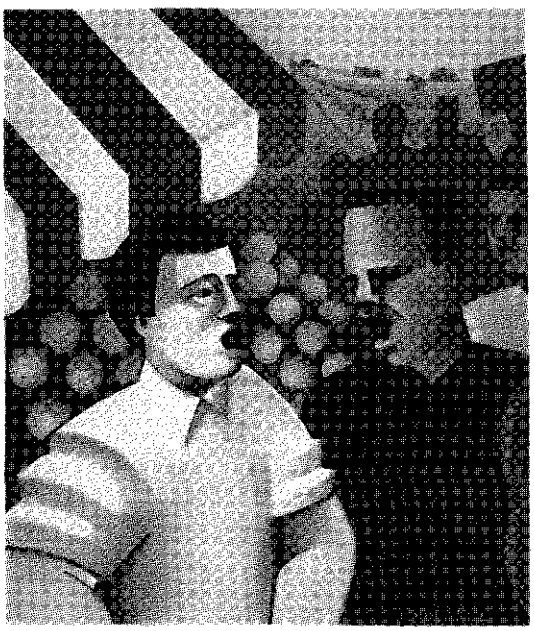
Dinkins—feel that Carson has enough of a following that he must be taken seriously as a political player. In fact, no one knows how representative he is. Yet somehow, no matter how outlandishly he behaves, no one seems able to deflate or dismiss him.

Dinkins is by nature a deeply moderate man, cautious and determined to be mayor of "all the people." Yet, for all the power and prerogatives of his office, he remains somehow unable to distance himself from angry leaders whose stock in trade is pitting the city's blacks against its whites. Dinkins is not alone in this dilemma. Far tougher mainstream blacks in other cities have the same problem with their own "race men"—figures like the Reverend Louis Farrakhan, Congressman Gus Savage, or Milwaukee's self-styled Black Panther leader, Michael McGee. In these cases, too, the moderates are muzzled, largely by their own political instincts. They know all too well that it does not pay to chastise militants, that it will seem to many black backers as the worst form of betrayal. To criticize Carson is to criticize—or make light of—the racial anger that he represents, and few black politicians will dare do that. Thus, no matter how badly Carson behaves, his views will help define the range of acceptable black opinion. No matter how far he goes, he must be reckoned with—and the most moderate of leaders will find themselves being tugged toward his extreme.



Sonny Carson's baptism into racial politics came in 1964 at the New York World's Fair. More than a million people were expected; President Lyndon Johnson was scheduled to speak; the nation and indeed the world were going to be watching. For the small radical Brooklyn chapter of the Congress of Racial Equality (CORE), all of this made the fair an ideal target for a dramatic demonstration: a "stall-in." The plan was that more than 2,500 cars would run out of gas on the highways leading to the fair; hundreds of other protesters would pull emergency brakes on subway trains and lie down on the bridges between the city and the fairgrounds. Amid the hoopla of the grand opening day, Brooklyn CORE would effectively close the fair down, lodging a huge symbolic protest against racial discrimination.

Never mind that the fair itself was in no way discriminatory and that the demands CORE put to the city were so sweeping as to be unmeetable. As Carson (who did not yet belong to CORE) wrote several years later: "I think it had something to do with jobs, but it wasn't important what it was all about; what was more important was the effect it had . . . it brought about [a] kind of pandemonium." Just to threaten such an action gave Brooklyn CORE a moment of delicious revenge. In Carson's words, it placed "the city in a position that black people always find themselves in . . . a position of having to react."

As it happened, the stall-in fizzled: The 2,500 cars did not appear, those that did were outnumbered by police and the city's

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roads remained largely unobstructed—but not before CORE's radicals had tasted an intoxicating new power. Not only had white New Yorkers utterly panicked, but the Brooklyn chapter also discovered that it could manipulate its much richer and better connected parent, the national CORE organization. CORE's national director, James Farmer, was against the stall-in from the start, but he had no answer to the Brooklynites' claim that only they and their bold tactics could appeal to the increasingly impatient youth of the Northern ghetto.

After a long night of talk, national CORE repudiated the stall-in, but it had to make up for this censure by mounting its own protest at the fair—massive sit-ins and lie-ins directed at only slightly more specific targets on the fairgrounds. The militant Brooklynites could hardly have asked for more. Farmer and three hundred fellow protesters were arrested, and thousands of fairgoers inconvenienced—not by a small group of radicals, but by one of the nation's most respected and mainstream civil rights organizations. Then, as now, the militant tail was wagging the moderate dog. The black protest movement was losing its capacity to resist the pull of its own extremists.

What happened at the fair was typical of what was taking place in many American cities in 1964, a critical moment for the civil rights movement. In many places, at that point, tactics began to overshadow goals and to pit followers irrevocably against the mainstream. By 1964, the movement was struggling to make itself relevant in the North, and in city after city, activists found that the old methods, perfected over a decade in the South, were not particularly suited to addressing Northern concerns. Civil disobedience—and the legal change it was meant to bring about—could do little to improve life in the ghetto, where the problem was less segregation than poverty and ingrained pathology. Almost by definition, the old tactics could not deliver, and when they did not, frustrated protesters only became more enraged. The less effective the movement was, the more militant it became. And poor Northern blacks, who were in any case far angrier than their middle-class Southern cousins, latched on to the idea of protest-for-protest's-sake.

Brooklyn CORE's confrontational methods—extended sit-ins and the like—were modeled on the Gandhian tactics that had been used in the South. But as the stall-in showed, those methods were already being emptied of meaning. The Brooklyn group's idea, as someone said at the time, was to do something that "drastically inconveniences people." Unlike in the South, the inconvenience now served little purpose beyond expressing anger and disrupting white lives. Yet ghetto youth like Carson, who had little hope of change and nothing to lose, were electrified by this expressive power. They joined the groups that offered the best chance for angry protest—unstintingly militant groups like the Muslims and Brooklyn CORE. These radicals then claimed, with some justification, that only they could appeal to the people in the street. Again and again, throughout the second half of the 1960s, middle-class black leaders found themselves scrambling leftward to catch up with the bitter ghetto blacks they claimed to represent. In fact, neither radicals nor moderates could deliver much in the way of change; but the militants could at least provide emotional satisfaction. Before long they and their nihilistic tactics had taken over the movement.

In 1964, Sonny Carson was the very model of the ghetto youth that CORE aimed to bring into the civil rights struggle. In his mid-twenties, out of work, thoroughly alienated from the white world around him, Carson was an all-too-typical product of the gangland Bedford-Stuyvesant where he grew up. In elementary school, he was

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already learning to steal pennies from newsstands. By junior high, he was an accomplished mugger, constantly high on drugs, and firm in his belief that the only important human quality was remorseless aggression. Before he had finished high school, he was serving in a state reformatory, and even there he was known as one of the toughest boys, prepared to defy the parole board rather than bend his neck to anyone.

By the time he joined Brooklyn CORE, Carson had tried the U.S. Army, the civil service, and the life of a grown-up hustler, by his own account selling drugs and running illegal gambling joints in Brooklyn. None of these activities could hold him. He was drifting more or less aimlessly when the stall-in galvanized him with its radical power politics. As for which branch of the movement spoke his language—the middle-class moderates or defiant nationalists—Carson never had a moment's doubt. "There was another brother," he has written, looking back on 1964, "named Martin Luther King":

> [He] was beginning to upset me because that philosophy he taught was spreading and it didn't seem to fit right with me. That "turn the other cheek" business—shee-it. Malcolm, I think, was saying it right: that if someone hit you on one side of your cheek, then you lay him in the grave.

Carson rose fast in movement politics, and by 1967 he had become executive director of Brooklyn CORE. By his own account, he was opposed to integration (he thought mingling with whites could only be humiliating), scornful of the black middle class (perpetrators of integration and traitors to their race), and openly thirsty for racial conflict (he still believes that only fear will bring whites to make concessions). Flamboyant and quotable, Carson was already attracting the attention of reporters, and he seemed to personify the anger that filled the ghetto by the summer of the Detroit and Newark riots. It was then that Bobby Kennedy chose him to sit on the Bedford-Stuyvesant Development Corporation, a self-help effort that would eventually absorb hundreds of millions of dollars in backing from the government and private groups like the Ford Foundation and IBM. Asked why he was flirting with local toughs and militants, Kennedy explained: "These are the people we have to reach. Some people may not like it, but they are in the street and that is where the ball game is being played."

For Carson, the long hot summer of 1967 was the opportunity of a lifetime. He did not have to manufacture the threat of violence—it hung heavy and visible on the streets—and he played brilliantly on the city's fears. Whether he and his followers actually encouraged rioting in Bed-Stuy remains a matter of dispute; there is no hard evidence, though there are witnesses who charge this, and he himself admits that his CORE office provided a rallying point for angry youths. In fact, Carson's game depended on just this uncertainty—and on convincing the city that he could turn the violence on and off.

Mayor John Lindsay played into Carson's hands, coming out to Brooklyn several times to try to soothe him and enlist his help. With bands of kids roaming up and down the streets, looting and setting fire to trash cans, Carson and his followers would sit with the Mayor at CORE headquarters and tell him menacingly just how bad things were. "These kids are sore," Carson said on one occasion. "If [the neighborhood is] . . . burned it won't be CORE's fault. . . . We don't want it burned down . . . but CORE won't stand in the way." By the end of the summer he was calling Lindsay's people in the small hours of the morning and insisting that the Mayor or a top aide come out to

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Brooklyn "immediately." Invariably they went—no matter how late or how frightening the meeting place—and invariably they were met by a new round of veiled and not-so-veiled threats.

By Carson's own account, he came of age that summer: He found himself politically and set the pattern for his career. By then, he had wrapped himself in the mantle of black power. He was playing a prominent part in the national CORE organization, helping push it toward separatism and threats of armed conflict. (It was that summer that the national body dropped the word "multiracial" from the organization's official description, spurring a mass exodus of white members.) Carson began to trade on his ties to Malcolm X. In fact, the two men had barely been acquainted, but Carson liked claiming the martyred leader as the source of his ideas. Also that summer, Brooklyn CORE bought some farmland and announced plans for a separatist black settlement. But even as Carson talked of leaving white America, he saw that his power lay in playing up to white fears. His Afro haircut and dashikis stunned white New York in 1967, as did his talk of armed black self-defense units. With both Lindsay and Bobby Kennedy paying court to him in Brooklyn—and the press obligingly printing every petty threat—Carson understandably imagined that there were no limits to his reach.

He began to look around for a place to wield his growing influence and soon found the perfect target in the Bed-Stuy public schools. With no particular authority but that of Brooklyn CORE, he announced he was going to "evaluate" 32 teachers, and after a few weeks he declared that all but five of them were "fired." He made no effort to disguise what he thought was their key shortcoming: Most of them were white. And, as ever, his main tactic was a threat: "If [the school superintendent] . . . thinks we are kidding," Carson told a reporter, "he had better wait until September and see what happens when those teachers . . . try to come back to our community."

When neither the Board of Education nor the teachers' union responded, Carson took the battle directly to them. First, he and a group of followers took over the union's Manhattan headquarters, spending a night on office couches and making free use of the telephones. Some weeks later, he tried the same tactic at the board's central office at 110 Livingston Street in Brooklyn. This time, the cops were there ahead of him, and—by Carson's own admission—he and his group provoked a nasty brawl that landed one policeman in the hospital. (Patrolman John Clarke was struck on the head with a three-foot metal ashtray, then taunted with shouts of "I hope you die.")

Carson's gang was accosting teachers in the halls, telling them, "The Germans did not do a good enough job with you Jews."

Also that summer, Carson invited Albert Shanker, head of the teachers' union, to a "community" meeting in a Brooklyn school. Shanker was heckled and then prevented from leaving. When he appealed to Carson to call off the thugs at the door, Carson merely laughed at what he later described as "this great big honky union chief standing there, blotchy with apparent fright." By September, Carson's gang was illegally entering school buildings and accosting teachers in the halls, telling them, among other things, "The Germans did not do a good enough job with you Jews."

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Within months, Carson's activities in Bed-Stuy attracted the attention of a group of more ideological militants pursuing the black power notion of "community control." The idea of community control—to get black parents involved in the education of their children—need not have become the source of racial conflict and bitterness that it remains to this day. It appealed across the political spectrum, to whites as well as blacks. Lindsay was trying to get school decentralization written into state law; the Ford Foundation was eager to finance a trial effort; even the teachers' union was willing to try it on an experimental basis. Yet all this establishment power combined proved no match for Carson and his more rudimentary notions of control.

Carson did not run the Ford-financed experiment in community empowerment carried out in Ocean Hill-Brownsville. He was not a key strategist or an important negotiator for the group of activists and educators (known as the "governing board") who were given charge of the neighborhood schools. All Carson did was help the governing board enforce its ideas. But in the end, his characteristic enforcement methods overshadowed everything else about the experiment.

In May 1968, the governing board unilaterally ousted 19 teachers, much as Carson had "fired" teachers in Bed-Stuy the year before. In Ocean Hill, too, a key charge against them was their race—and their alleged disloyalty to the black power goals of the experiment. When the teachers' union objected to the ousters, Carson and his men roamed the corridors at will, just as they had done once before in Bed-Stuy. The only difference now was that they had permission, and no one tried to stop them when they threatened Jewish teachers. Finally, when police were brought in to restore order in the schools, Carson led the "community" in resisting them.

The nature of Carson's relationship with the governing board remains unclear to this day. He and his men seemed to be everywhere in the district in the spring of 1967 and fall of 1968, not only inside school buildings but also guarding the doors, organizing student boycotts, and leading rallies. Carson claimed at the time to be representing the "community"; he now says he was "advising" the board. In fact, it was never clear whether he was taking orders, giving them, or simply acting on his own initiative with the board's acquiescence. From the white teachers' point of view it hardly mattered. The fact was that his tactics made it impossible for most of them to cooperate with the experiment, doing more than perhaps anything else to provoke the bitter teachers' strike that closed the city school system through the fall of 1968.

Union teachers were met by Carson and some fifty of his men wearing police helmets and battle fatigues

On one of the worst days of the autumn, police tried to escort a group of union teachers to work. They were met on the school steps by Carson and some fifty of his men wearing police helmets and battle fatigues. After a tense standoff (Carson says there was violence), the teachers were allowed to enter the building, but not to teach. Shortly afterward they were told to report to an auditorium in another school. There, they found the walls lined with Carson and his followers, now carrying sticks and bandoliers of bullets. The teachers clustered in the middle of the room as Carson's men began to curse at them. "Wait till we get the lights

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out," the men shouted. "We'll throw lye in your faces. You'll be very visible." The lights in the windowless hall were flicked on and off; teachers were pushed and shoved and told they would leave the room only "in pine boxes."

By the time the strikes ended, in mid-November, the crisis in the schools had become a two-way affair, with the teachers' bitter strikes contributing heavily to the poisoned racial atmosphere. Still, there can be no mistaking Carson's role in setting the tone in the city, polarizing whites and blacks to the point where many wrote off the other race entirely.

Where did Carson get this power? Was the community behind him? As usual, no one was sure. His rallies in Ocean Hill were never very large, and it took only a few dozen men to implement his intimidating politics. Still, he claimed to represent black New York—and, as usual, no black leaders came forward to dispute his claim. Indeed, members of the governing board played this ambiguity for all it was worth: they gave the impression that they themselves were moderates, willing to negotiate and uncomfortable with intimidation, but then shrugged that they could not control Carson or the grass-roots anger he represented.

After the strike, Carson settled into a career as an activist, roaming New York at will and involving himself wherever racial conflict threatened. He would appear sporadically in the news—confronting school officials here, defending militants somewhere else, disrupting the State Senate in Albany and standing by as the drapery in the hall was set on fire. By 1973, he was something of a celebrity, riding the wave of radical chic that crested in those years. He had written a book about his gangland youth. Paramount Pictures was preparing to make a movie out of it: The Education of Sonny Carson. He was, he later reported, lecturing at Yale on the July evening when police came to his house to arrest him in connection with a local murder.

There was never much doubt about what happened on the night of the crime. Carson's base at the time was in a hotel in Bed-Stuy, where he and his followers kept what they called a museum of African artifacts. Several rare pieces and some money were stolen. Somehow Carson and cronies knew exactly who had done it and decided to take matters into their own hands. There were eight men in the posse, including Carson; all allegedly had guns. They found their victims easily enough, and one of the thieves was fatally shot at his home in Brooklyn. The other was wounded and left for dead at a deserted spot on Long Island. He survived and testified extensively about what happened. Yet despite agreement about the basic facts, Carson's role remains in doubt.

The well-attended trials—for kidnapping and murder—lasted into 1976. Carson spent much of that period caught up in the glittering world of Hollywood: consulting with Paramount, hanging out on the movie set, riding around in a limousine with a white chauffeur. When the film was done, he crisscrossed the country on a publicity tour, granting chatty interviews about black victimization in America. One reporter who met with him at poolside in Los Angeles said he looked as if he had been staying at the Beverly Wilshire Hotel all his life. As for his involvement in a murder case, it only seemed to add to his glamour as a streetwise militant.

In court, where he sometimes showed up in bathrobe and slippers, Carson claimed that he and his gang had only been implementing justice. Because he was black, he could not rely on the white police; he had intended only a "citizen's arrest." Besides, he claimed, there would be no trial if he were not a famous militant. The case turned on the question of whether or not he had

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ordered the shooting. Carson said no; the triggerman argued yes. But neither the gunman nor the surviving victim made very credible witnesses. (One was deemed unreliable because he had taken part in the crime; the other admitted lying on the stand.) Carson was acquitted of murder, but ended up serving 17 months in prison on kidnapping charges. The day of his murder acquittal he stood up in court and told an applauding crowd: "I'm just happy for everyone. Especially for the people in the community. It's more a victory for them than for us."

Today, more than 15 years later, Carson still derives much of his power from a vague claim that he represents the "community." As in the case of Brooklyn CORE, the claim cannot be easily tested, yet this very uncertainty is what gives Carson his hold on city politics. Today, as in 1967, he shrewdly cloaks himself in mystery—and casts a large shadow from a dubious base.

A visit to his office in the basement of a downtown Brooklyn building reveals a taste for the ritual trappings of power. The office is a rambling expanse of little rooms, many of them decorated with African images and posters of Malcolm X. The front door is manned by a pair of taciturn youths; a half dozen more young men are lounging in the hallways or sitting along the wall in Carson's personal office. All wear high-topped African skullcaps; most have flamboyant hairstyles, and several sport rings in their ears or noses or both. They greet each other with the salutation "Peace" and elaborate, choreographed hugs. Carson himself wears a brilliantly colored kente-cloth cap and carries an inlaid African chieftain's staff.

No one seems to be working except Carson, here exercising the quiet power of an old-style ward boss. At mid-morning, he is on the phone, making calls to city officials to fix little problems for followers: getting a larger apartment for a woman in a housing project, asking the D.A.'s office to look into a case. "If they say they can't help you," he says to someone battling the bureaucracy, "tell them you're a friend of mine." Still other calls concern upcoming "community" events: advising someone how to get corporate backing for a rally, finding a photographer to cover the renaming of a Brooklyn street. To almost all, Carson is charming, asking even city officials about their families. In between calls, he tends to the waiting youth. With them he is by turns avuncular and authoritarian, sternly rebuking one or two who have neglected office chores. Later, in the room where the young men practice martial arts (it is decorated with more Malcolm posters and a life-sized papier-mâché Egyptian portal), Carson describes himself: "I have a talent: I'm good at organizing people. I know how to judge people and to talk to people and to motivate them."

To the white world and the city at large, he projects a very different kind of power—deliberately more menacing. He talks in a formal interview about the coming racial "confrontation" and the need for black people to arm themselves. Malcolm X's phrase "by any means necessary" crops up several times in an hour's conversation in which Carson rejects not only integration but also the ideas of "harmony" and "equality" between black and white. He clearly enjoys the shock value of what he says, salting his talk with sharp asides about burning down the ghetto, "taking over," and targeting a large number of other Korean merchants. "Then look out! Look out!" he warns at one point, rapping his chieftain's rod on the table in front of him. His number one enemy is the police, and he sees violence against them as justified self-defense. His preferred tactics are those that make whites "suffer some of the same indignities that we've had to suffer." Asked if his power

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is a threat-based power, he bridles at first but then backtracks. "All politics are about threats," he says. "You do what you have to do. If the majority of people in the society are warmongers, then you have to be a warmonger, too. That's the only way to get out of their grasp."

Carson's goals are somewhat less clear. By his own description, his struggle is reactive: a victim's necessary response to the crushing world around him. If he is violent, it is because the world is violent; if he cannot see beyond race, that too is because society cannot. "When you live in America, it's always about race," he says. He sees whites spreading crack in the ghetto and "criminalizing" black attempts to control their own lives: "They make it their mission," he says, "to make sure we don't have power." The answer, for Carson, is "power" for power's sake—essentially, resistance for resistance's sake. This sometimes takes the form of traditional black power ideals: Carson still talks about the creation of a "black nation" (he imagines a self-sufficient community "like the Hasidim") and about "community control" (black oversight not only of ghetto schools but also other ghetto institutions). But by and large, his aims are short-term: ad hoc reactions to the pressures of the moment. He sees his tough-guy tactics as a way to instill pride and rally other blacks to say "no" to whites. The most successful actions, in his view, are those that "cause some pain and get some attention. That," he says, "is what it is really all about—to get some attention."

Asked about the size of his organization, he answers evasively: "That's just what my enemies want to know." No one outside his immediate circle seems to have any idea. He regularly turned out scores of demonstrators in front of the Korean groceries. Yet, as when he terrorized Ocean Hill, he may be working with no more than a close-knit gang. As for how he lives—or whether he pays his cadres—neither friends nor enemies will speculate about that. (There was some talk at the time of the first Korean boycotts, in Brooklyn in 1988, that the protesters were extorting money from grocers. These rumors were never substantiated.)

Carson's links to the city's loose black-militant coalition are equally shadowy. He contributes in his own way to the race-driven causes of other leaders like the Reverend Al Sharpton. At the time of the Howard Beach incident, for example, Carson provided a "security force" for black demonstrations in the white neighborhood where the beatings and death of a black youth took place. Yet even when he joins in an alliance, Carson remains a loner, making no secret of his contempt for Sharpton and company. His closest associates—his only acknowledged, long-term allies—belong to a group of Marxist revolutionaries known as the December 12th Movement. Generally younger than Carson and more intellectual, they too cover themselves with considerable secrecy. Every now and again, a flamboyant member will grant an interview about their ideology: They are determined to overthrow the sys-

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tem, by violent means if necessary. In 1985, seven members were charged in a politically motivated armed robbery, but acquitted. The workings of the organization remain little known.

Carson himself is convinced that his support is growing—that the black community is gradually catching up with him and the militant positions he has held for 25 years. Looking back over his life, he draws a sharp distinction between "our pathetic past"—the largely cooperative, integrationist black mood of the Fifties and early Sixties—and the tough, defiant racial pride of recent decades. In the past, he says, "most black people didn't know they were black." Among the older generation this is still a problem; that is why Carson devotes himself to "making people in our community understand what's happening to them." But, he says, the younger generation is different: "They grew up on streets with names like Malcolm X Boulevard. They've seen the struggle and the coming together—and they can only go on to be better operators."

Today as ever, Carson is an unabashed self-promoter, but he is not wrong about his resonance in the black community. The mood among both middle- and lower-class blacks is, if anything, more nationalist today than it was in 1964. True, unprecedented numbers of blacks have made their way into the mainstream—earning college diplomas, finding professional jobs, assuming considerable economic and electoral power. All of Carson's sharpest rhetoric could not prevent that integration. Yet the bitter race-based worldview that he and others like him voice still sours many lives among even the best integrated. Carson and company keep this racial anger alive. They feed it and fan it and make it look glamorous—and make fun of those blacks who don't seem to share it. Their brand of separatism is evident in middle-class black politics: it's what fuels demands for Afrocentric education and legitimizes race-based boycotts like the one in Flatbush. More troubling, though, more disastrously limiting for blacks is the effect this bitterness has in the poorer community. Carson was quite right to boast, in the aftermath of the 1968 school strike, that he had converted thousands of black students into little "Sonny Carsons." He made violent confrontation seem not only acceptable but glorious and convinced an entire generation of New York kids that white people were their implacable enemies.

Where will Carson take this following? He is as vague as ever. Asked what the alternative is to integration, he refuses to say—"No, no, I can't tell you that"—as if the answer were a military secret. In fact, today as before, Carson seems driven by the logic of his tactics rather than by a well-developed ideology. That, more than anything, may be the secret of his appeal. More than 25 years after the stall-in, Brooklyn CORE's approach still carries the day: Protest for protest's sake is still so emotionally satisfying for many blacks that it manages to trump most other kinds of politics. What's more, as the past 25 years show, the real size of Carson's following makes little difference. Whether or not he represents most black people, he evidently speaks to something in the hearts of many. They may not approve of everything he does and may even deplore some of his most extreme methods. Yet the sheer defiance of his manner commands a wide respect. As one fellow radical, Coltrane Chimurenga, recently told the *Village Voice*, "Say what you want about Sonny, he always stands up for black people." As long as the world is divided sharply into black and white, Carson's appeal will remain—as it is today—largely unchallengeable in the black community. As long as the battle lines can be drawn that starkly, there will not be much that men like David Dinkins can do to shake Carson's hold on the city's racial emotions. ■

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Kicking New York's Dependency Habit

by Lawrence M. Mead

New York is the capital of welfare, but not of welfare reform. No other city is so known for entrenched dependency. In 1988, nearly 700,000 city residents lived on Aid to Families with Dependent Children, the core welfare program. If other welfare programs are added, the total comes to more than 1.2 million, or 15 percent of the population, making the city's welfare caseload larger than the total population of all but a handful of American cities. Mainly because of New York City's lopsided figures, New York State also ranks near the top of all states for welfare dependency.

Nevertheless the city and state have virtually ignored the surprisingly successful wave of welfare reforms that swept other states and Washington in the last decade. Nearly all the recent welfare reforms have been based on what is now widely known as "workfare": programs that require welfare recipients to work or prepare for work in return for support. Workfare used to mean requiring that employable recipients "work off," or earn, their grants by taking unpaid government jobs. Today such programs may offer a range of activities, including private-sector job search and training, as well as mandatory unpaid work assignments.

Workfare raises family income, often reduces dependency, and most importantly, helps hard-core welfare recipients reorganize their lives. Workfare does not, for the most part, force people to do things they do not want to do. On the contrary, it helps welfare recipients do what they themselves wish to do: become more self-reliant.

Many welfare recipients live in a "culture of poverty" that lacks the practical sanctions, social pressures, role models, and other influences that uphold self-reliance for most Americans. As Congress recognized in the Family Support Act of 1988, which all but requires states to institute extensive workfare programs, workfare re-creates those sanctions, pressures, and supports.

In New York, however, bureaucracy, ideology, and politics have combined to frustrate workfare. Instead, the opponents of workfare advocate a range of voluntary approaches, including "work incentives" and training and jobs programs. Unfortunately, the evidence shows that hard-core welfare recipients seldom participate in such programs voluntarily. Few sign up, and many of those who do sign up do not show up. Under workfare, many more recipients sign up and show up, for work or for training, day after day.

This is a crucial difference. The non-working poor are the reservoir from which our greatest social problems flow. The source of their difficulties, however, is not so much that they are dependent on a government check—so are Social Security recipi-

Lawrence M. Mead is associate professor of politics at New York University. He is the author of Beyond Entitlement. *This article is based, in part, on his forthcoming book,* The New Politics of Poverty *(Basic Books).*

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ents—but that they do not work, or come from families of workers. They are thus cut off from the social and economic discipline most crucial to integrating people into American life. Of course, to say that the problem of the nonworking poor is that they do not work is a truism. But it is a useful one, for it clarifies the path to reform: the way out of the welfare trap is not to solve all the subtle mysteries of dependency or refashion the economy, but to get the poor to work.

The past decade has seen some very impressive intellectual battles over the causes of and possible solutions to long-term dependency. And yet most of the discussion, even among thinkers who disagree, has been based on a common premise which we might call the "competence assumption." This is the belief that hard-core nonworkers who live deep in the culture of poverty are nevertheless fundamentally like people in the rest of society. In particular, this view assumes that they respond to incentives and opportunities in essentially the same way as members of the middle class. Unfortunately, the long-term poor and dependent are seldom competent in this sense.

Conservatives, for instance, often argue that welfare per se causes dependency: Families become dysfunctional simply because welfare offers them an alternative to supporting themselves, an alternative which at least for a time can seem economically rational. There is some truth in this view: AFDC plus associated benefits such as food stamps, Medicaid, and public housing can compete in value with low-skilled wages, especially in places with high benefits such as New York. In this view, if we simply lowered benefits or limited eligibility, the poor, being as rational as anyone else, would leave welfare and get jobs.

But life on welfare seldom makes economic sense, even in the few cases where it may "pay" in the short run to be dependent. Federal figures show that most welfare recipients who take jobs soon find themselves above the poverty level and off the rolls. Steady work at any legal wage is a much surer way to lift a family above the poverty line than reliance on welfare, even in New York, and steady workers seldom remain at the minimum wage for long. Nationally in 1989, only 3 percent of family heads who worked full time all year were poor, according to Census Bureau data. The dependent also forgo the chances for advancement and higher wages available even to low-skilled workers. Moreover, the level of dependency turns out to be only loosely related to benefits. The states with the highest dependency rates in the country are Mississippi and Louisiana, where AFDC benefits are only $120 and $190 a month respectively. New York City's AFDC benefits have declined by 37 percent in real terms since 1970, yet much of the increase in dependency occurred during that period.

Even most welfare recipients realize that welfare does not make sense: About half leave the rolls within two years after resolving the crisis that made them apply for help in the first place. The other half of the cases are much more worrisome, particularly the quarter that spend a total of ten years or more on AFDC. The key to welfare reform is to figure out why these people, the hard-core dependents, stay on the rolls instead of going to work.

More liberal analysts say that recipients are not tempted onto welfare by the benefits but forced onto it by injustice, economic adversity, or a lack of social support. They contend that the poor and dependent cannot work because the wages they could earn are too low, jobs are unavailable due to racial bias or the collapse of manufacturing employment, or welfare mothers are hamstrung by children or an absence of child care. But research has undermined each of these claims.

It is true that low-skilled workers are often poorly paid, but as noted above, the

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rewards of employment, if sustained, almost always exceed those of welfare. On the whole, it is not low-skilled workers who suffer racial exclusion but more affluent blacks seeking positions traditionally held by whites.

It is also implausible to say welfare mothers are prevented from working by children. Nationally, more than half of single mothers are employed, and nearly three of four employed single mothers work full time. Welfare families are not even unusually large; three-fourths of the mothers have only one or two children, according to Congressional figures. Child care is vastly more available than welfare advocates claim. According to government surveys, most child care is cheap and arranged informally with friends or relatives. Government child care centers are secondary.

Nor are jobs scarce. The decline of the factory has been offset by an explosion of jobs in the service economy. Immigrants, both legal and illegal, are flooding into the U.S. because jobs are so plentiful.

Indeed, most inner-city youths say they can find jobs. If they are jobless, it is usually because they leave work often, not because they cannot find it. The long-term poor appear to decline work for personal reasons, or because they expect better pay than the market offers them. Overwhelmingly, the cause of poverty is not a shortage of jobs, or low wages, but that the poor do not work consistently.

Why is this so? Studies suggest that the long-term poor believe in the work ethic. Yet they have a hard time practicing it. This is surprising to most people, for the essence of middle-class behavior is consistency: One does what one intends to do. Mainstream citizens either obey social norms or flout them deliberately. Most analysts assume that the poor must be consistent too. Most poor adults, however, are less self-directed. Often raised in unstable homes with little discipline and few rewards for diligence, they need structure as well as help if they are to fulfill the work obligation they believe in.

This is the problem that workfare addresses and voluntary welfare reforms do not. Workfare does not reform the economy, or raise the skill or educational level of the poor. Rather, it closes the gap between the intentions of the poor and their behavior, and for this most recipients are actually grateful. Because the long-term poor already believe in the work ethic, workfare rests on moral authority more than force.

Over the last several decades, America has had considerable experience with voluntary welfare reform programs of the sort workfare opponents favor. For the most part they have failed. Voluntary programs are basically of two types: training programs and work incentives that subsidize the income of workers. Numerous evaluations of voluntary training programs by the Brookings Institution, the Urban Institute, the Congressional Budget Office, various universities, and other researchers have painted a remarkably consistent picture of their effects. Job training programs do improve the earnings of their clients but

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usually by less than $1,000 a year, not enough to lift clients out of poverty or off welfare. Even these small income gains often decay with time. More important, no voluntary training program has significantly increased overall work levels.

Badly designed training programs may even reduce work effort if they raise unrealistic expectations. Clients who have done poorly in school should not be encouraged to turn down available low-paid employment in order to pursue education or training plans from which they are unlikely to benefit. The "job skills" welfare clients need most are initiative, responsibility, and reliability—that is, the ability to get to work on time and take orders.

Workfare closes the gap between the intentions of the poor and their behavior

Even when voluntary training programs are well run, relatively few welfare clients bother to participate in them. In 1987, for example, New York City sent letters to 100,000 AFDC clients urging them to volunteer for training and employment programs; only 3 percent came to orientation, and only 1 percent participated. Even aggressive, well-run voluntary programs that offer extensive training and help with child care and transportation (such as Massachusetts's Employment and Training Choices program) find they cannot reach beyond the most employable third of the caseload. Most of the participants who gain jobs would probably have done so without the programs. Voluntary training programs simply do not motivate most of the passive poor to do anything to help themselves.

The record of work incentives is even bleaker than that of voluntary programs. Work incentives seek to make work more attractive by allowing welfare clients to keep more of their outside earnings if they work, rather than deducting the whole amount from their grants. This reduces the welfare "tax" on their productive efforts. But studies by economists Frank Levy, Robert Moffitt, and others show that while stronger incentives may raise work effort among nonworking welfare clients, they reduce it among the working poor by allowing them to make the same money while working fewer hours. The net result, according to most studies, has been a decline in work effort for the low-income population as a whole, or at best little change.

During the 1970s, thanks to changes in federal law that allowed AFDC recipients to keep more of their earnings, the effective tax on those earnings fell substantially. Yet the percentage of welfare mothers reporting employment in a given month remained very low. The Reagan reforms in 1981 practically eliminated work incentives, raising the net tax on earnings of most welfare clients to 70 percent or more. But work effort by the welfare dependent did not decrease.

It should not be surprising that the long-term poor do not respond to economic incentives, for if they did, long-term poverty could hardly occur among the employable. Successful antipoverty programs must produce economic rationality in clients rather than assume it. That is why workfare succeeds where voluntary approaches fail.

Even by the standards traditionally used to assess job-training programs, workfare is more effective, though not markedly so. According to research by the Manpower Demonstration and Research Corporation (MDRC), workfare raises client income as much or more than voluntary programs, though still not by enough, in itself, to get clients out of poverty. It is also more successful than voluntary job training at getting

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clients into regular paid employment. In seven recent workfare programs studied by MDRC, the proportion of clients employed rose by as much as 37 percent (though from a low base). Workfare also reduced the welfare rolls in some cases, but to date this effect is not as pronounced as the increase in earnings and employment. (These estimates are for all those assigned to workfare programs, whether or not they participated; estimates confined to the actual participants would be higher.)

These traditional indicators, however, do not show the success of workfare at achieving its principal goal: inspiring more work *effort* from its clients. Workfare causes many more welfare clients to do something constructive to help themselves, whether working, looking for work, or entering training. It does this because the mandatory aspect of the program dramatically raises participation rates.

More than 90 percent of the clients in mandatory government employment liked their jobs

In the programs studied closely by the Manpower Demonstration and Research Corporation, about half the registrants participated in some work-oriented activity, including job search, public employment, training, or actual work, within six to nine months of entering the program. That is much higher than the participation rate for voluntary programs. In the best of these new workfare programs, in San Diego, 45 percent of clients participated actively within six months, compared with only 5 percent for comparable clients not in the program. Also, 25 percent of clients reported finding work during this time, compared with 13 percent for those not subject to the program. In the part of the city where the program tried to saturate the employable caseload with work activities, participation rose as high as three-quarters over a year.

Participation in turn leads to employment. My own statistical studies show that the higher the proportion of recipients that are involved in workfare, the higher the proportion that enter jobs and stay there. This is true even controlling for such factors as the employability of clients and economic conditions.

It is not necessary that the program put everyone immediately into a private-sector job search or unpaid work; education and training also produce job entries, provided they do not become a substitute for employment. But it is essential that clients be required to participate in something. Almost any workfare activity requires clients to get used to getting to work every day and on time. After this major adjustment, employment tends to follow.

Workfare, though mandatory, is much less punitive than advocates say. Because most recipients want to work, they usually accept the authority of the program. Though few clients will volunteer for job training, workfare programs find they rarely have to use sanctions once clients are told they must participate. The rate at which clients have grants reduced for non-cooperation is low even in the most demanding programs. In San Diego, 7 percent of mandatory job search clients and 22 percent of clients in mandatory work had to be sanctioned. The typical workfare program, however, still sanctions only about 5 percent of its participants.

According to Manpower Demonstration and Research Corporation surveys, over 90 percent of clients in mandatory government employment liked their jobs, and at least two-thirds looked forward to coming to

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work. Although the jobs were generally rudimentary, a majority of workers felt they had learned something. Large majorities usually said the work requirement was fair, and that they were satisfied to be earning their welfare instead of getting it for nothing.

On the federal level, welfare has been moving slowly in the direction of workfare since 1967, when the Work Incentive (WIN) program was enacted. WIN offered training and job-seeking skills and support. It was mandatory in the limited sense that most adult male recipients and some women were required to register with a WIN office. Then, if asked, they had to participate in WIN activities on pain of reductions in their welfare grants.

WIN had little impact, however, mainly because few registrants were called to participate actively, and those who were usually went into training programs instead of actual employment. In 1971, Congress reformed WIN to raise participation and work levels. In 1981, at the urging of the Reagan Administration, Congress allowed states to replace WIN with more demanding programs of their own. States were allowed for the first time to place AFDC clients in mandatory unpaid work.

Most states seized the chance, and new programs sprouted all over the country. Their success (as demonstrated by MDRC), along with the political popularity of work requirements, made workfare the theme of welfare reform in Washington. The 1988 Family Support Act (FSA) mandated that states sharply expand workfare programs. States are still allowed considerable latitude in the programs' design.

But New York, with the largest urban caseload, has resisted workfare every step of the way. Part of the explanation is that welfare administrators, especially in the city, have been worried about other things. In the Sixties and early Seventies the city's Human Resources Administration (HRA) was one of the most lax welfare departments in the country. By 1973, 27 percent of welfare claims in the city were being paid in error, compared with a national rate of 17 percent. Driven by threats of cuts in federal funding, HRA administrators put enormous effort into reducing the error rate, until by the end of the 1970s it was 10 percent or less. Under Mayor Koch, Blanche Bernstein and later administrators further strengthened the agency's procedures. Today it is known for tough management.

The enormous effort to get and keep the agency under control, however, left little energy or political capital to spend on reform. Thus, although a succession of HRA administrators under the Koch administration proposed work-oriented reforms, they were unable to overcome substantial political and interest-group opposition in the city and in Albany.

More than in any other city, the nonprofit sector in New York is thick with foundations and service organizations that see it as their business to influence social policy. Most of these advocacy groups oppose workfare and most other restrictions on welfare. They have considerable political clout: easy access to administrators in both HRA and the state-level Department of Social Services, which has been particularly receptive to their views; close alliances with legislators in Albany, where the State Assembly has been the main roadblock to workfare; and considerable influence in the courts.

As a result of suits brought by advocacy groups, judges have imposed such detailed court orders on HRA that the judges or the advocates themselves have in some instances virtually taken over policymaking. The ACLU, for instance, is now legally entitled to participate in city policymaking on foster care. Under pressure from lawsuits, the city not only agreed to house all homeless but to do so more generously, and expensively, than in any other city. The blizzard of lawsuits and special-interest lob-

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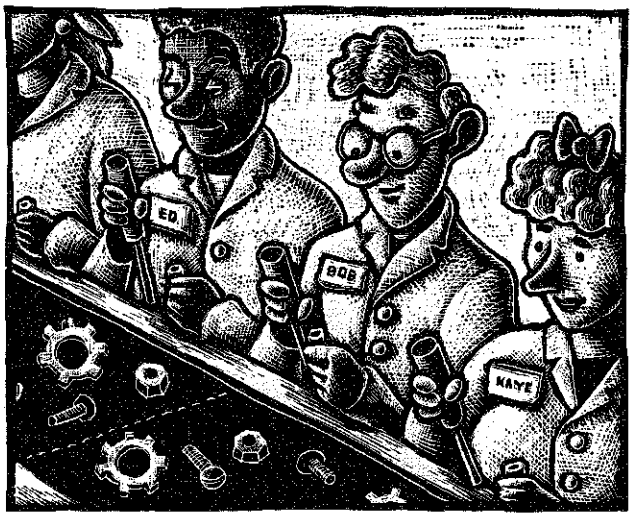
bying smothers innovation. Reform requires leadership, but HRA is always playing defense. Reform requires the freedom to change; HRA constantly has new rules imposed upon it from outside.

HRA has never been able to make employment part of its routines. WIN required that employable welfare recipients sign up for possible job placement before they could get aid. I found in my studies, however, that New York's welfare centers treated this as a formality. Clerks told applicants for AFDC that they had to "put in an appearance" at WIN, not that they were expected to go to work. Disgusted WIN staff dismissed the routine as no more meaningful than "getting your driver's license renewed."



This attitude destroys workfare. In effective work programs staff are supportive of clients, but they also enforce high expectations, because they believe the recipients can achieve self-reliance.

In New York I found two WIN offices, one in the city and one upstate, where staff rallied recipients with a combination of authority and enthusiasm. They levied obligations without flinching, but they also believed that clients had prospects and told them so. They treated recipients as morally responsible, thus shifting some of the obligation of overcoming dependency from the agency to the recipient. The aim, one social service worker told me, was that the dependent should "pay taxes and bitch about the government like everybody else." Recipients hustled out of these offices to seek jobs as if shot from a gun.

Unfortunately, these offices were exceptions. The fault does not lie primarily with HRA. Starting in 1983, HRA initiated or proposed a number of work programs, all designed to break into the employable caseload and get more people to participate. One of these would have placed more recipients in unpaid work in exchange for their welfare grants, another in training or education. A third would have paid recipients higher grants for working. All would have required recipients to participate on pain of losing some portion of their grant.

In Albany, however, HRA's workfare proposals were blocked and the agency never could institute workfare except on a very small scale. Under the Dinkins administration, workfare has largely been abandoned. The Cuomo administration has been unwilling to lead the fight for mandatory programs, preferring to launch a number of voluntary work programs.

In Albany the workfare debate intensified late in the 1980s as the U.S. Congress considered and then passed the Family Support Act of 1988, which came down firmly on the side of requiring welfare recipients to participate in workfare. By 1991 state programs must show that 7 percent of the employable welfare recipients (including mothers with children over three) are engaged in workfare programs on a monthly basis. By 1995, that figure must rise to 20 percent. States that fail to comply will lose some of their federal funding. These may sound like low participation rates. But because states must achieve them each month,

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in practice FSA will require states to enroll a majority of employable clients in workfare over the course of a year, or about the participation level achieved in the best recent programs. The act does not explicitly require that programs be mandatory, but no voluntary program has achieved participation this high.

Despite these new requirements, New York's Assembly leaders continued to insist that the new programs be voluntary, stressing work incentives, training, and education virtually to the exclusion of actual work, and limiting workfare's use of public jobs (in which clients receive no pay other than welfare) or sanctions.

The Senate, controlled by Republicans, wanted a program in which obligation was the keynote. Their plan would have required that recipients undertake a strenuous job search before qualifying for training. It was unafraid of unpaid work and tougher about sanctions. HRA generally backed the Senate approach, though its priority—correct in my view—was more to raise participation in a range of workfare activities than to insist that everyone work right away.

The most contentious question was higher education. The two houses argued over how long recipients could stay in college without actually going to work. The Assembly would have allowed a recipient to complete a four-year degree program before having to work, effectively turning AFDC into a scholarship program available only to the welfare poor. The Senate would have limited further study to two years.

In essence, the Assembly wanted a cosmetic version of workfare that might have generated enough success stories to give an impression that recipients were going to work, but without disturbing the bulk of the caseload. The Senate proposal, on the other hand, would have radically changed the nature of AFDC, firmly linking welfare and employment.

The quality of the debate was a disgrace to New York politics. In Albany, unlike Washington, neither the considerable body of research on workfare nor the national experience with workfare programs was seriously considered. On each of the specific disputes in workfare—unpaid work, job search versus immediate training, and sanctions—the hard evidence favored workfare.

The quality of the workfare debate was a disgrace to New York politics

Some of the advocacy groups were reasonable enough to negotiate with HRA over the shape of workfare. They would have accepted a greater degree of obligation in exchange for some new funding for education and training. The most influential groups and individuals, however, rejected workfare as a disingenuous scheme to evict clients from the welfare rolls.

The Advocates Workgroup on Welfare Reform, uniting 14 welfare lobbies, distributed a booklet in Albany advocating a very permissive version of workfare as well as much higher welfare benefits. The report deprecated any "harsh requirements or sanctions" as an affront to "equity." One of these groups, Statewide Youth Advocacy, circulated a study claiming to show that HRA's intentions in workfare were punitive. It accused the agency of "overuse" of unpaid work assignments simply to push people off welfare, rather than finding real jobs for recipients. It also accused HRA of "massive abuse of the sanctioning process."

This document made much of the fact that unpaid employment and sanctioning are more common under HRA's work policies than in other states, but it offered no evi-

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dence that this causes unusual hardship. Most likely, HRA more often uses sanctions and requires unpaid work because the New York caseload is unusually entrenched and has responded exceptionally poorly to voluntary work and training opportunities. Welfare practices in every state are now subject to uniform federal rules that protect clients. Past New York work programs have been decidedly undemanding, so it is implausible that HRA's routines are punitive now.

The criticisms, nevertheless, were widely believed in the Assembly, especially on the key Committee on Social Services, in charge of the workfare legislation, which resolutely resisted the arguments of HRA managers. At one point, HRA sought the support of Charles Rangel, the influential Harlem congressman. Rangel voted for the Family Support Act but opposed HRA's proposals after receiving advice from a number of welfare advocates, including James Dumpson, a former New York City welfare commissioner, and David Jones, president of the Community Service Society.

For their part, the Republicans who controlled the Senate failed to make their case effectively. Their version of workfare was more hard-line than experience or research suggests is necessary. The emphasis was almost exclusively on immediate job placement, but some recipients do need some training to be employable, especially in New York, where long-term dependency is so common and the culture of poverty so powerful. The better strategy is to expand involvement in a range of work-oriented activities, after which greater employment will follow. One must be severe about enforcing participation but lenient at first about the nature of participation. This was the style of the most exemplary work program to date, in San Diego. It was also HRA's position. The Senate's rather rigid emphasis on job placement was also impolitic, as it fed suspicions that workfare advocates were more interested in pushing people off the rolls than in helping them.

The debate dragged on long enough to cost the state $73.5 million in new workfare funding that was available under the Family Support Act during 1990. The combatants came to terms only in June 1990, just before the federal law became binding in October.

New York's new program, called JOBS, is formally mandatory, but its teeth are dull. It limits the ability of welfare departments to impose unpaid work on clients, and limits the use of sanctions as well. It emphasizes assessing clients for remedial training before sending them on a job search. It does limit college to two years. Counties retain considerable discretion within these rules.

It is very doubtful that JOBS will satisfy the new federal requirement of 20 percent participation on a monthly basis by 1995. In theory, each county is supposed to meet the norms that apply to the state as a whole. That will be especially difficult for New York City. To comply, HRA would have to place many more recipients in job search and unpaid work than Albany has allowed it to up to now. The outlook is for further failure and conflict, with pressure building either to set a lower standard for the city, which would require higher participation upstate to compensate, or to get a reprieve from Washington.

New York's leaders seem to feel morally compelled to do much more for the needy than other cities do, yet morally barred from demanding that recipients do anything to help themselves.

This ethos of entitlement stands between the poor and the only way out of the poverty culture. For their good and ours New York's poor need to get to work; New York's leaders need to stop discouraging them and help them on their way. ■

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Albany Passes the Check

by Edwin S. Rubenstein

While Albany's budget meltdown is grabbing headlines, another statewide crisis is developing at the local level. For even as New York State was spending beyond its means in the boom years of the 1980s, it was also forcing local governments to spend beyond their means through "mandated" programs, designed and required, but not paid for, by the state. As a result, many localities now face fiscal crises made in Albany.

New York State imposes an unusually large array of mandates on local governments. A 1978 study prepared for the Advisory Commission on Intergovernmental Relations concluded that New York State imposed more mandates on its local governments than any other state—in 60 of the 77 categories reviewed. California was second with 52; Alabama had the fewest with 11. The average was 35.

Using a broader definition of mandates, a formal inventory compiled by the New York State Legislative Commission on Expenditure Review in 1981 found that county governments alone faced 2,632 separate statutory state mandates. Of these mandates, 608 imposed additional costs on county governments.

That fact does much to explain one of New York's great fiscal paradoxes: Most states endure either high state or high local taxes, but New York has both (see Figure 1). And while the state can, however painfully, control its own budget crisis, local governments have lost much of their power to cut the spending that drives their tax needs.

Mandates have become a leading tool of fiscal irresponsibility. The mandate power tempts state officials to take credit for expensive social programs, while shifting to local politicians the political heat for tax increases or offsetting service cuts.

The fiscal burden caused by state mandates is not trivial. Mandated programs now account for 60 percent of the average county budget, according to a recent survey by the New York State Association of Counties. Of the state's 57 counties (not counting New York City), 29 responded to a survey by the association asking what proportion of local revenues was spent complying with social service mandates. The responses ranged from 17.5 percent in Steuben County to 75.5 percent in Niagara. School districts, too, feel the sting of state mandates: State-mandated spending accounts for approximately 76 percent of their budgets, according to a recent study by the State Education Department.

These figures undoubtedly overstate the marginal cost of state mandates, since even without mandates localities would surely offer some of the services the state now requires. Still, the numbers suggest

Edwin S. Rubenstein is an economist and an adjunct fellow of the Manhattan Institute. He also writes an economics column for National Review. *The research for this article was supported by the Brunie Fund for New York Journalism.*

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how far local governance has slipped out of the control of local governments.

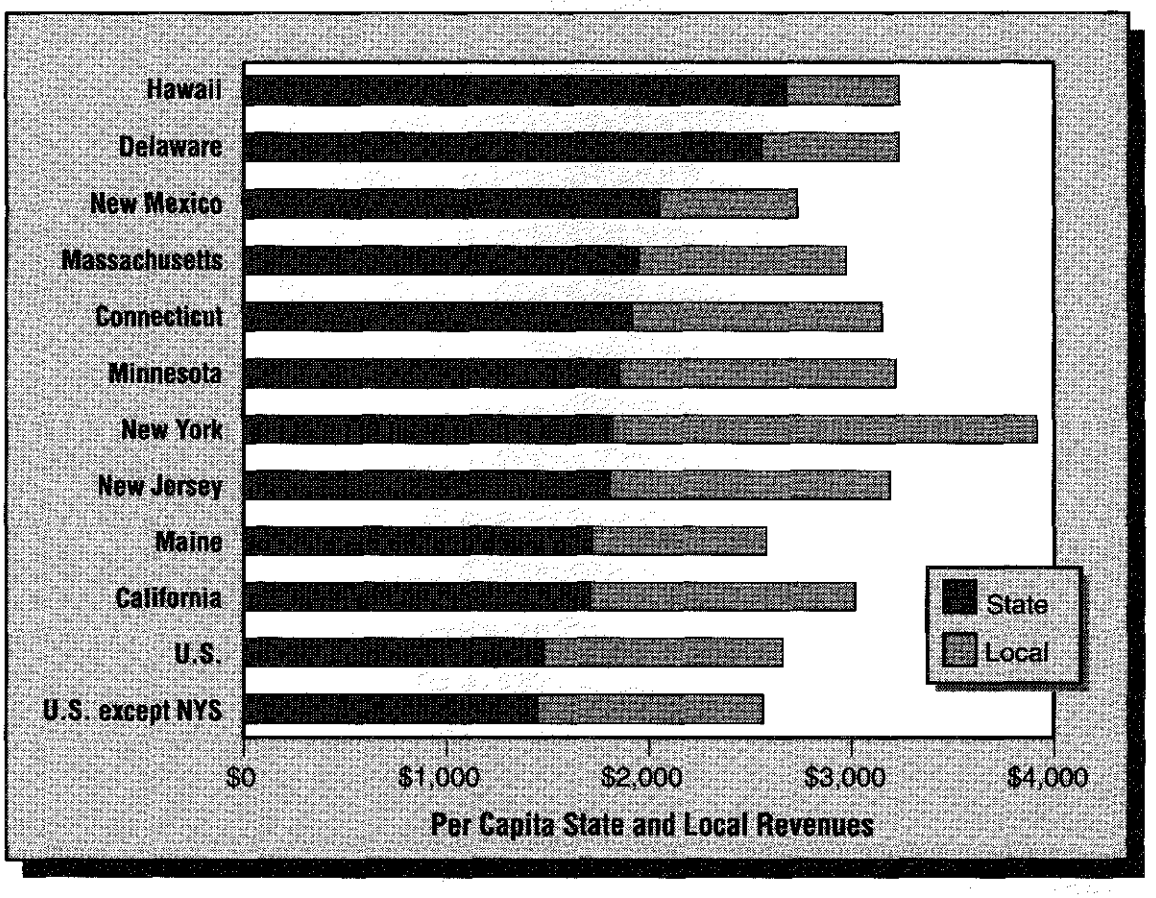
Mandates range in scope and significance from Medicaid—the most expensive of all—to a host of "nuisance" mandates, such as the limit of 25 cents per page local governments may charge for duplicating public documents under the state's Freedom of Information Act (see sidebar on page 54). Mandates deny local governments the power to set priorities. In education, for instance, they control everything from class size to the number of fire drills. New York's public school teachers are paid $38,000 per year on average, or 24 percent more than the national average. Yet since 1986, the $100 million Excellence in Teaching program has required school districts to grant bonuses to teachers without regard to performance or merit. If a local school board believes this money could be better spent, say on books, its hands are tied.

The results in many other cases are equally ludicrous:

• Cortland County is being forced by the state to spend $800,000 to enlarge and modernize its courthouse. "They want it more modern, they wanted central air-con-

FIGURE 1: NEW YORK'S DOUBLE BURDEN

State and Local Revenues for the Ten States with the Highest State Taxes



Note: Shown are the ten states with highest per capita state revenues, excluding Alaska and Wyoming, which rely largely on taxes and royalties from out-of-state corporations. Federal funds are not included.

Source: U.S. Department of Commerce.

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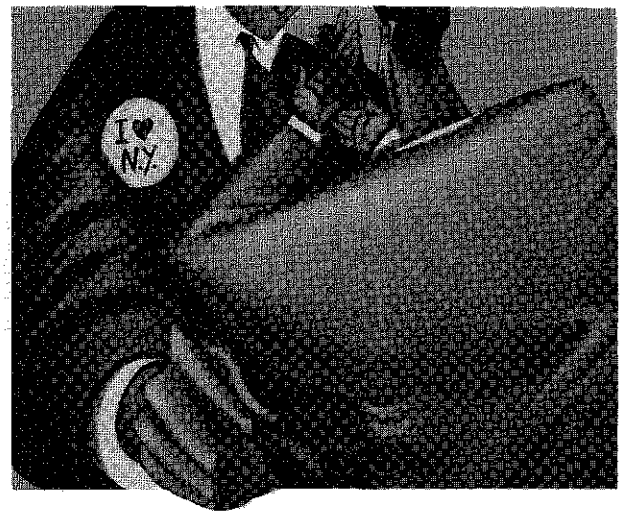
ditioning," says Richard Tupper, chairman of the county legislature. "I don't have central air-conditioning in my home."

• The small upstate town of Altamont was forced to alter its solid waste facility four times during construction and twice after it was finished to comply with Environmental Conservation Department rule changes.

• Class size in special education resource rooms is limited to five students, though a 1985 study by a New York City commission found that raising the number to seven would not harm the quality of education. Raising the limit would save $18 million a year in New York City alone, according to the City Office of Management and Budget.



• The New York State Local Finance Law prevents localities from issuing zero coupon bonds, entering into letter of credit agreements with banks, issuing variable-rate debt, and employing certain other financial tools that could lower debt service costs by at least $18 million a year in New York City alone, according to a report by the Office of Management and Budget.

• The Wicks Law (actually a series of laws enacted in 1912) requires local governments to award three separate contracts—electrical, plumbing, and heating—for public works projects costing more than $50,000. A single contract system could save the state and its local governments more than $400 million, according to the New York State Division of Budget.

The Medicaid program alone would establish New York as the nation's mandate capital. Total statewide Medicaid costs (federal, state, and local) came to $11.9 billion in 1991, with localities footing about 21 percent of the bill, or $2.3 billion. Though Washington mandates a minimal core Medicaid program, the states have a great deal of latitude in setting eligibility rules and deciding how broad a range of services to offer. New York is one of only three states that offer the full gamut of optional services, a state decision for which counties share the burden. New York also provides Medicaid to people on "home relief" (a local version of welfare). The Federal Government does not pay for this option at all, so local governments are stuck with a 50 percent share. In many New York counties Medicaid costs have become the single largest budget item, taking more than 35 percent of revenues in counties such as Jefferson, Ontario, and Otsego. Yet most other states do not require local governments to contribute to Medicaid at all.

Medicaid outlays in New York State grew 150 percent in real terms from 1980 to 1990. They grew another 17 percent, not adjusted for inflation, in 1991. They are expected to grow by 9.5 percent in 1992, a number that is artificially low because of a one-time lag in payments: In 1993 the outlays are projected to jump another 18 percent. State Comptroller Edward Regan attributes part of this rise to the mandate system: "If the state had been forced to pay the entire amount . . . I guarantee that a genuine welfare/Medicaid cost control system would have been instituted."

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One particularly onerous mandate, which also provides a good illustration of the perverse incentives of the mandate system, is the rule requiring county governments to provide special education services for handicapped children under the age of five. The Education for All Handicapped Children Act, passed by the U.S. Congress in 1975, required states to provide such services for handicapped children of school age, but not for preschoolers. Congress did, however, provide some funding for states that included preschoolers, and Albany could not resist. By 1989, New York State's Education of Preschool Handicapped Children program was costing more than $400 million a year, of which the Federal Government contributed a mere $26 million, while the state and the counties split the rest.

This program is a textbook example of how not to design public policy. While the state foists half of the federally unreimbursed cost onto counties, it allows them absolutely no say in how the program operates. School districts, not counties, evaluate the children and have the final say on placement, but they provide no money or other resources for the program. Often the districts delegate the responsibility of selecting students to private organizations that provide the services and have a clear financial interest in placing as many children as possible into the program. The state actively recruits children into the preschool program through a network of "Early Childhood Direction Centers" in certain elementary schools. Specially trained personnel conduct PTA talks and parent-training sessions, and also publish newsletters advising parents of the entitlement.

By assigning bureaucratic control and financial responsibility to different units of government, the state undercut any possibility of accountability. There are none of the cost controls that a responsible program might have instituted: means tests, sliding fee scales, or limits on the distances children can be transported. Albany forbids counties to impose tighter eligibility standards.

The cost of transporting, educating, and counseling these preschoolers, after growing 25 percent per year in recent years, now averages $25,000 per pupil. A program that did not exist until 1975 now consumes $5 million a year in Rensselaer County, according to County Executive John Buono, amounting to 24 percent of local tax revenues. Moreover, counties must pay all such bills up front, then wait up to 15 months for partial reimbursement from the state. The delay, of course, is yet another gimmick in the state's annual budget-balancing act.

In December 1990 Governor Cuomo reneged on his proposal to increase the state's share of the preschool program costs to 55 percent. As a result, writes Buono, "Before we had spent 10 cents of our 1991 budget, we were out of balance by $500,000."

The Employee Explosion

One can also see the effects of mandates by looking at government employment figures. Local governments in New York employ a lot of workers. So many, in fact, that Governor Cuomo recently argued that local governments, not the state, are responsible for New York's high total tax burden. On the surface, he has a case.

As of October 1989, New York had 957,000 local government employees. That works out to 479 local government employees per 10,000 population, 30.5 percent more than the national average. From 1980 through 1989, according to Commerce Department data, the number of people employed by local governments increased 18 percent. Last year, the Albany-based Public Policy Institute reports local government employment increased 1.5 percent, or by nearly 16,000 jobs.

But much of this increase appears to be driven by state mandates. There are no

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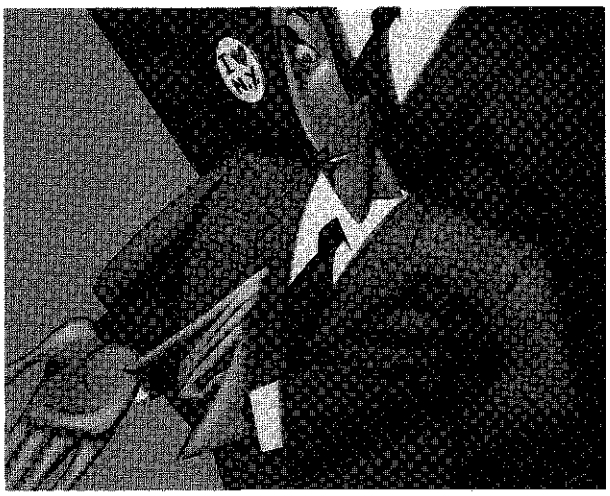
comprehensive statewide data on the growth of mandated spending or employment during the 1980s. We do know, however, that local government employment has been expanding fastest in just those services with a heavy and growing mandate burden.

U.S. Commerce Department data, for example, show that 60 percent of the growth in local government employment between 1980 and 1989 occurred in elementary and secondary education, an area rife with new mandates. Similarly the number of local corrections personnel soared by 108 percent between 1982 and 1989, six times faster than the 18 percent rise in total local government employment. Local jails have come under strict mandates prescribing the number of guards and supervisory personnel for a given population of inmates.



The experience of individual jurisdictions, mostly counties, also suggests that mandates are driving the increase in local government spending and employment:

• Suffolk County, the most populous county outside New York City, cut discretionary county spending by $45 million in 1991. But mandated spending went up $70 million, according to County Executive Patrick Halpin. The county spent 53 percent of its General Fund on mandated programs in 1991, compared to 44 percent in 1988.

• In Monroe County, between 1988 and 1991, 65 new full-time positions were created to deliver mandated social services. The staff of the county jail has increased by 64 within the last year. By contrast, nonmandated local services, including parks, roads, youth programs, libraries, arts agencies, and the Monroe Community College, lost 72 full-time employees over the same period.

• Rensselaer County had twenty fewer full-time employees at the end of February 1991 than it had five years earlier, according to the county's personnel director. Virtually all cuts occurred in nonmandated programs. The number of janitors and repairmen assigned to public buildings was reduced by 15, but staffing at county nursing homes, subject to state mandates, increased from 402 to 423, and the number of mental health personnel rose from 68 to 79.

• Faced with an 82 percent increase in property taxes last year, Ulster County resorted to some drastic cost-cutting moves, which kept the rise to 18.8 percent. Most of the cuts came out of nonmandated programs: Road work was deferred for a year, and bridges (half of which are deficient) were not repaired. Arts programs were cut by one-fourth, a significant cut because Ulster County includes Woodstock, home of the state's largest concentration of artists outside of New York City.

But the most persuasive evidence that mandates are responsible for the growth of local government is drawn from the changing nature of state aid to localities. In 1990 Albany sent $15.5 billion, or two-thirds of the state's general fund, as aid to local governments. This aid comes in two forms: "unrestricted" aid, which local governments can spend pretty much as they please, and "categorical" aid, which often represents the state's share of mandated spending programs.

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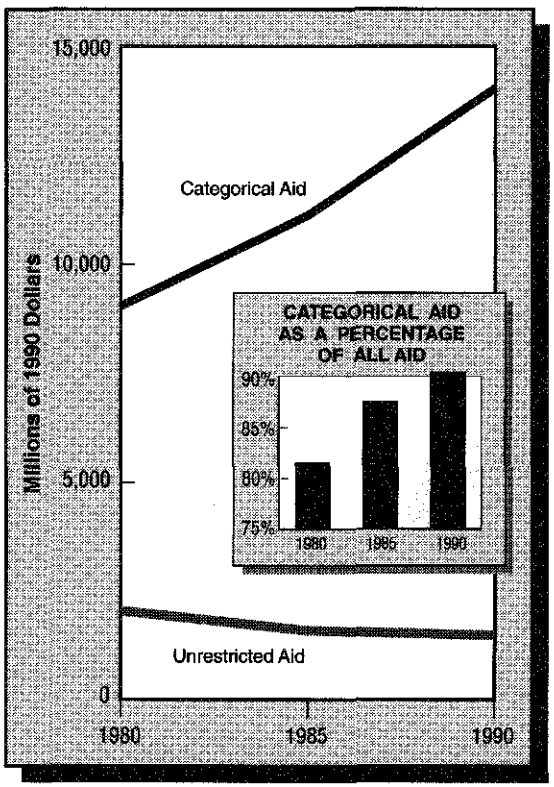
Categorical aid often costs localities money because they are required to match (partially or dollar for dollar) the state's contribution. Most local officials would gladly do without certain categories of aid if the corresponding state mandates were reduced also. For state politicians, however, categorical aid affords an opportunity to make common cause with unions, welfare recipients, caseworkers, and other special interest groups, since Albany can direct the money (along with local matching funds) to programs that benefit favored groups.

Changes in the amount of categorical aid provide a rough "proxy" measure for how much of local government spending and employment is being driven by mandates. The 1980s saw a huge rise in categorical state aid, both absolutely and as a proportion of all state aid. From 1980 to 1990, categorical aid increased from $9 billion to $14 billion (in 1990 dollars), an increase of 56 percent in real terms (see Figure 2). During the 1960s and 1970s, categorical aid had actually fallen as a proportion of all state aid. But from 1980 to 1990, categorical aid rose from 81.5 percent of all state aid to more than 90.4 percent.

This last figure may seem like a small increase from an already very large base. But as noted before, the state mandates many programs that localities would provide without prompting from the state. These services account for a large proportion of categorical aid. This "given" base of categorical aid would not be expected to change rapidly. In that light, a proportional increase in categorical aid of 8.9 percentage points and real growth of 56 percent in a decade loom quite large, suggesting that the bulge in local government employment is in part the result of exotic, and costly, micromanagement by mandate.

Unrestricted aid, by contrast, reduces pressure on the local tax base and reduces the impact of state mandates. But it has little political value to state legislators because they cannot guarantee that it will flow to specific organized constituencies.

FIGURE 2
Categorical Aid vs. Unrestricted Aid in 1990 Dollars



Source: NYS Comptroller, State Aid to Local Government, 1990.

The proportion of all state aid that was unrestricted fell by nearly half during the Eighties. Unrestricted aid has been capped for most localities since 1987 and was terminated entirely for counties in 1990. Governor Cuomo's 1992 budget would cut state revenue sharing by about 50 percent for cities and eliminate it entirely for villages and towns.

The Governor's Relief Package

In response to an extensive lobbying campaign by local governments, Governor Cuomo proposed $300 million in mandate

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MANDATE BITES DOG FEE

The most expensive state mandates cover sweeping social programs such as Medicaid and welfare. But most of the state's thousands of mandates deal with relatively trivial matters, illustrating the state government's penchant for micromanagement. For example:

- State law limits municipal dog license fees to $7.50, plus a tag fee of $1.
- Nursing homes must fill out a 52-page State Health Department form requiring 600 separate pieces of information for every patient. Each form takes about five hours to complete. The federal government requires just six pages.
- Towns must notify scofflaws—people with three or more unpaid traffic tickets within a three-month period—by expensive certified mail instead of by first class.
- Local election boards are required to pay for election announcements in at least two newspapers, even if they have voter-outreach ad campaigns that are more effective. Election boards are required to set up special registration sites two days each October, which also must be advertised in two newspapers. New York City spends some $3 million advertising and manning these registration sites, even though it has a 24-hour telephone registration hotline and both political parties mount registration campaigns.
- New York City is required to pay unemployment compensation for volunteer workers.
- Local fire departments are required to give trainees forty hours of instruction as peace officers.
- In New York City, and only in New York City, the state requires that at least one police officer be assigned to each polling place on Election Day.
- Localities must require their residents to separate trash for recycling, which may be more expensive than sorting garbage after it is collected.
- Schools are required to offer regular instruction in the humane treatment of animals and birds.

relief last December, which went nowhere. He then announced a new mandate-relief package on January 30 of this year:

> Governor Mario M. Cuomo announced today that his 1991-92 Executive Budget will include aggressive mandate reform measures that would save local governments more than $450 million and school districts in excess of $160 million next year. The Governor also announced his support of local government efforts to save up to $400 million through reform of the Wicks law [discussed above].

What the three-and-a-half-page single-spaced press release failed to mention was that most of the proposed "mandate relief" would actually come in the form of state authorization for a $1 billion increase in local taxes, out of which local governments could close the fiscal gaps opened up by mandates in the first place. Aside from the disastrous impact of a $1 billion tax increase in the current economic climate, the Governor's proposal also ignores the fundamental political problem: Local officials would still be stuck with raising revenue for programs they cannot control. At most, the increased taxing authority would slow the decline of nonmandated local services.

Some of the Governor's mandate proposals—procedural and eligibility reforms in AFDC, Medicaid, and preschool special ed—would genuinely reduce costs for localities. But even here there are problems: Most of the Governor's Medicaid relief proposals—an array of caps, freezes, and reimbursement rate reductions—would simply push costs from state and local government

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onto hospitals and nursing homes, endangering some already fragile institutions while failing to reduce overall medical costs.

Reforming the Wicks law is a good idea, but doing so would require more than the Governor's nod of approval: It would require a titanic political struggle in the Legislature and with the unions, which the Governor shows no signs of preparing to enter and might not be able to win.

Real Mandate Reform

The mandate issue is not new. As long ago as 1938 the New York State Conference of Mayors and Municipal Officials asked a state constitutional convention to prohibit costly mandates unless the Legislature "either empowers the localities concerned to levy additional taxes, other than upon real estate, to defray these expenditures, or provides for a distribution to the localities of additional state funds." The request was turned down; a 1967 constitutional convention likewise passed up 14 different mandate relief proposals.

One device used by many states in an attempt to hold down mandated costs is the "fiscal note," which evaluates proposed state legislation in terms of its fiscal implications for local governments. The New York State Legislature has required such notes in some cases since 1984. But this reform has not worked well. Legislation is usually worded too vaguely, state and local government information systems are not detailed enough for precise estimates, and preparing the estimates is expensive. As a result, the procedure is used sparingly and often ignored. In New York, half of the fiscal notes prepared conclude that fiscal impacts are "indeterminable" or "unknown."

Thirteen states have tried a more effective approach: a constitutional provision limiting mandates, usually by forcing states to pay for programs they require, which establishes a direct link between the costs and benefits of government growth.

California's restriction is viewed as the most inclusive. In part it states:

> Whenever the Legislature or any state agency mandates a new program or higher level of service in any local government, the state shall provide subvention of funds to reimburse such local government for the cost of such program or increased level of service.

Since 1986, Comptroller Edward Regan, a former Erie County executive, has been urging a similar amendment for New York State. The Comptroller's amendment would not go as far as California's, simply prohibiting expansions of welfare and Medicaid or property tax exemptions unless the state reimburses localities for them. But existing mandate burdens would be left unaffected.

The ultimate solution to the mandate problem would be to require the state to pay for any specific programs it puts into place. The wording of such a provision would have to exclude highly general requirements such as the obligation to provide public schooling through grade 12. But any state statutory mandate that shifts specific burdens onto localities or micromanages local governments into specific procedures should be paid for by the state. That would not only cut waste and mandated costs, it would also reduce the crushing burden of the state bureaucracy and leave local governments free to innovate. Spending would no longer be politically costless for state legislators and the Governor, since they would have to bear the onus of raising taxes as well as take credit for new programs. City and county governments, no longer burdened by state programs, would have the money to provide services their constituents really want. The result would be more accountable, more democratic, and less costly government throughout New York. ■

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Get Out of Jail Free

by James B. Jacobs

In 1981, Delissa Carter, a Queens resident, murdered her foster mother and framed her ex-husband for the crime. Several years later, she admitted that she had lied to the grand jury and that she herself was the murderer. But because of a unique New York State law that automatically grants immunity from criminal prosecution to grand jury witnesses for any crime related to their testimony, she can never be tried for the murder.

New York State's rules of criminal procedure pose a major barrier to prosecuting criminals, especially organized crime figures. Though police and prosecutors, in New York as elsewhere, like to complain that the federal courts stymie their efforts to put bad guys in jail, the truth is that New York State imposes far more severe restrictions on law enforcement officials than those found in federal law. Criminal prosecutions here are encumbered by dozens of exotic procedural restrictions unknown not only at the federal level but also in most other states. Many of these roadblocks were erected by New York's highest court, the New York Court of Appeals, but many others are the work, in whole or in part, of the New York State Legislature.

Delissa Carter, for instance, escaped justice under what is called "transactional immunity." Together, the New York State Legislature and Court of Appeals have produced the most lopsided version of this rule in the country.

Grand juries have the right to require witnesses to testify about their knowledge of any matter under investigation: Witnesses who refuse can be charged with contempt of court, or if they lie, with perjury. Under the Fifth Amendment to the Constitution, however, no person can be compelled to be a witness against himself in any criminal proceeding.

To reconcile the conflicting Fifth Amendment rights of witnesses with the grand jury's right to investigate, the U.S Supreme Court has sensibly held that a witness can be compelled to provide even self-incriminating evidence as long as it will not be used against him in a future prosecution. This is what is known as "use immunity." Under use immunity, neither the witness's testimony, nor any evidence derived from that testimony, can be used against him in a future criminal trial. (*Kastigar* v. *United States*, 1972). However, the witness can still be prosecuted in a future trial for a crime about which he has testified, if the prosecution can prove that it has not used his testimony to prepare the case.

New York, however, provides grand jury witnesses with automatic transactional

James B. Jacobs is professor of law and director of the Center for Research on Crime and Justice at New York University School of Law. *The author wishes to gratefully acknowledge the assistance of his colleagues Larry Crocker, Steve Zeidman, and especially Chet Mirsky, and to express special appreciation for Boaz Morag's research assistance. The research for this article was made possible by the Brunie Fund for New York Journalism.*

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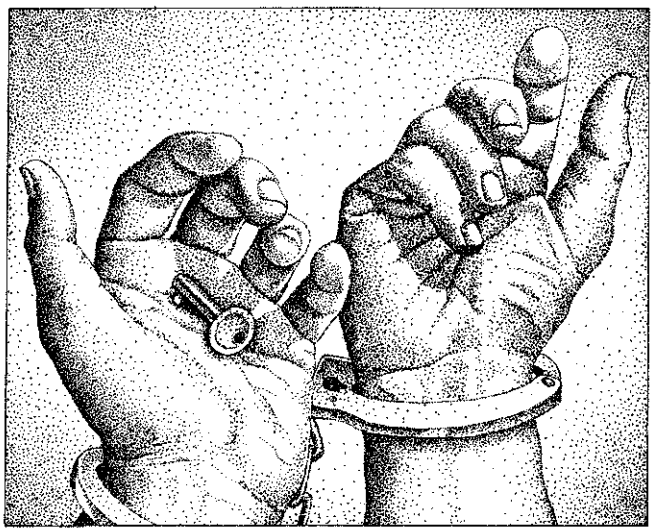
immunity, which is much broader than use immunity, far more generous to criminal defendants, and far more frustrating to law enforcement officials. Under transactional immunity a witness can never be tried for any crime related to any "transaction, matter, or thing" about which he has testified, even if his guilt can be established without using his testimony, or even if his testimony was completely false, as in the Delissa Carter case.

New York's grand jury immunity also applies to true but unexpected testimony. For example, if a witness before a grand jury investigating gambling were asked, "When was the last time you saw John Doe?" and he answered, "When I killed him," he would receive immunity for the homicide. And though a witness for a federal grand jury is not entitled to any immunity for the compelled production of physical evidence, like blood, semen, or hair, in New York witnesses get full transactional immunity for compelled production of such evidence.



The term "transactional immunity" does not do justice to the breadth of New York's grand jury immunity rule. Arguably, a grand jury witness who is questioned about his position, responsibilities, and activities in a labor union obtains immunity for all offenses he has ever committed in his role as a labor official.

Thus, in one recent case, *People* v. *Fazzini and Pezza* (1985), organized crime figures allegedly associated with the Luchese crime family were indicted in Suffolk County for price-fixing and coercion in the carting industry during the mid-1980s. The prosecutors had to dismiss the charges because the defendants had been questioned about corruption in the carting industry by a Nassau County grand jury several years earlier. It did not matter that their earlier testimony had been about different, earlier crimes and was of no use to the prosecutors in preparing the later case. The prosecutors, unable to say for sure that the New York Courts would not find the defendants to have been immunized by their earlier testimony, could not risk months of work and millions of tax dollars on the case, and so dropped it. In effect, the defendants' earlier grand jury testimony had provided them with immunity for future crimes.

To make matters even more difficult, a New York grand jury witness confronted with a subpoena does not have to plead the Fifth Amendment in order to obtain transactional immunity—he automatically receives it. Thus, unlike his federal counterpart, the state prosecutor is not alerted to the possibility that someone he thinks is an innocent witness might actually have been an accomplice or perpetrator of the crime. No other state confers both transactional and automatic immunity on grand jury witnesses.

It is not easy to exaggerate the consequences of the immunity law, especially in complex organized crime cases where many of the witnesses are criminals themselves. Indeed, as in the case of Fazzini and Pezza's activities in the carting industry, they may be criminally

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active in many different counties around the state. Because the state has no effective mechanism for communication and cooperation among its 62 county prosecutors and several state prosecutors' offices, investigations in one jurisdiction are frequently blown when a suspect is called to testify before a grand jury in another part of the state.

The transactional immunity rule becomes even more devastating in combination with other New York criminal procedures. The New York State constitution, for instance, provides that all felony charges be brought by a grand jury indictment unless that privilege is waived by the defendant. Furthermore, New York law is exceptionally strict in prohibiting hearsay and requiring trial quality testimony before the grand jury. In a federal grand jury hearing, a law enforcement official can summarize the testimony that the government's witnesses will offer at trial, but in New York the grand jury must hear firsthand from victims and other witnesses. Inevitably, some of the people initially assumed to be victims and witnesses later turn out to be perpetrators or accomplices, but by then they have earned automatic immunity by their grand jury testimony.

One notorious example arose out of the 1982 murder of three CBS employees, who stumbled onto the contract killing of a diamond company employee on a Manhattan pier. In the course of investigating a suspect named Donald Nash, more than fifty witnesses were called before the grand jury. One witness, a building superintendent named Alberto Torres, was called upon to establish that Nash had access to a telephone in his building from which a call had been placed a few minutes after the multiple killings. More than a year later, a key witness revealed that Torres had helped to obtain Nash's services as the contract killer. In federal court, Torres could have been prosecuted for murder. But in New York State, Torres's grand jury testimony automatically provided him with an immunity bath which forever prevents prosecution for that crime.

New York prosecutors can request grand jury witnesses to waive their immunity, though usually the only people who will do so are those with nothing to hide. Nonetheless, the New York courts have been known to overturn even such voluntary waivers of immunity. In *People* v. *Higley* (1984), a county legislator charged with criminal conflict of interest (for doing business with the county as a meat vendor through a dummy corporation run by his sister), signed a waiver of immunity on advice of counsel and then testified before the grand jury. He was subsequently indicted and convicted. However, the Court of Appeals reversed his conviction, ruling that the waiver was invalid because the prosecutor had neglected to ask Higley to swear to the truth of the waiver in front of the grand jury. Consider how anomalous this result is. If the police were shown to have beaten a confession out of a defendant, the confession would be suppressed, but the defendant could still be prosecuted for the crime. In *Higley*, however, a defendant who waived immunity in the presence of an attorney, but not in the presence of the grand jury, is forever immune from prosecution.

Inevitably, some of the people assumed to be witnesses turn out to be criminals, but by then they have earned automatic immunity by their grand jury testimony

Virtually every major newspaper in the state has endorsed amending the immunity

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rule. So have Governor Cuomo and Attorney General Robert Abrams. In 1982, the New York State District Attorneys Association made an all-out effort, led by Manhattan District Attorney Robert Morgenthau, to persuade the legislature to replace transactional with use immunity. The bill was passed by the Senate in 1983, but it was defeated in the Assembly Codes Committee under Chairman (now Speaker) Melvin Miller's strong opposition.

The Accomplice Corroboration Rule

It is almost impossible to bring professional criminals to justice without getting their accomplices to testify against them. In many cases accomplice testimony is all the prosecution has to go on. In New York State, however, accomplice testimony has been made much less useful by a rule forbidding a defendant to be convicted solely upon such testimony. In New York, even if ten accomplices were to give mutually corroborating testimony against a major crime figure, leaving judge and jury no reasonable doubt about the defendant's guilt, a conviction could not stand unless the prosecution could provide independent evidence corroborating the accomplices' testimony. As a result, criminals can protect themselves from apprehension by dealing only with co-conspirators.

In Brooklyn recently a man who had hired two young men to commit a murder for him escaped from justice via this rule. Both the young assassins were willing to testify against the man who hired them, but without independent corroboration the case had to be dropped. Similarly, arson-for-profit cases often go unprosecuted, even though the prosecutor has made a deal with the "torch" to testify against the owner who hired him. The same problem occurs in automobile insurance fraud cases in which an owner hires someone to "steal" and destroy his vehicle.

As with the transactional immunity rule, the accomplice corroboration rule is most significant in organized crime cases, especially racketeering cases. Dozens of contractors may be prepared to testify that they paid off a labor racketeer, but for want of independent corroboration many such cases are dropped, thrown out at trial, or reversed on appeal.

There is no justification for such an inflexible rule. Skepticism about accomplice testimony is understandable, since accomplices are often tempted to lie out of spite for the defendant, or to shift responsibility from themselves. The entire criminal justice process, however, has been designed to enable juries to weigh the impartiality, veracity, and reliability of such witnesses. That is why the adversary system places so much emphasis on the presumption of innocence, cross-examination, and the standard of proof beyond a reasonable doubt. When cross-examination is not sufficient to expose a witness's bias and inadequacies, the judge is allowed, and sometimes required, to warn the jury that certain kinds of evidence and testimony should be closely scrutinized. But a hard and fast rule of corroboration applies only to witnesses who are accomplices.

Moreover, New York's accomplice corroboration rule applies even when the accomplice has no fear of future prosecution because he already has immunity. Yet previously immunized accomplices may be far more reliable witnesses than nonaccomplices without immunity who may have motives for currying favor with the prosecution. For example, a defendant can be convicted on the testimony of a jailhouse stoolie who is promised a reduction in sentence in exchange for his testimony. No independent corroboration is required. Indeed, no corroboration is necessary where a witness stands to make millions of dollars in a civil suit which would follow the defendant's conviction in a criminal case.

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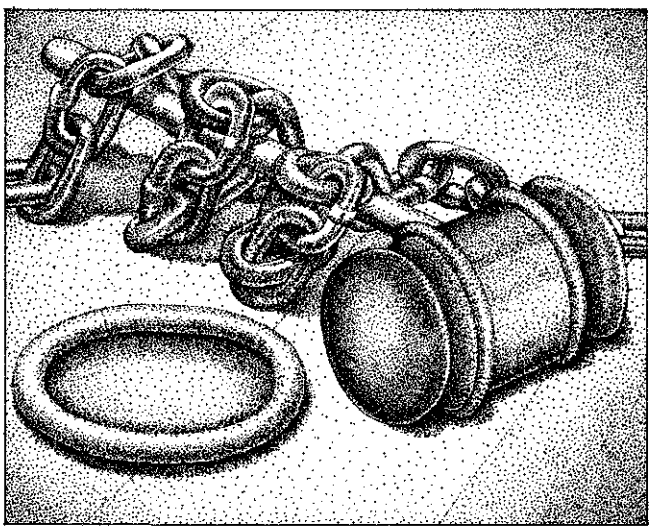
Together, the accomplice corroboration rule and the transactional immunity rule explain why state and county prosecutors in New York so often turn their organized crime cases over to federal prosecutors. Neither the federal government nor 31 states require corroboration of accomplice testimony. Among the 19 states that do, the definition of who is an accomplice varies considerably. New York uses a broad definition. In 1937 the New York Commission on the Administration of Justice recommended abolishing the accomplice corroboration rule for reasons that are just as applicable today: "The Committee was strongly of the opinion that this section in the present code is a refuge of organized crime and racketeering. . . . The Committee carefully considered the possibility that the deletion of this provision might encourage frameups and related abuses, but was strongly of the opinion that this would not be the case. The deletion of this provision merely restores the common law. . . ."



More recently, Governor Cuomo's 1986 Program Bill called for elimination of the accomplice corroboration rule, but the legislative leadership has shown no inclination to endorse this much-needed reform.

The Right to Counsel

Over the past thirty years, federal courts have greatly expanded the right of criminal defendants to legal counsel, making it more difficult for police to railroad the innocent. But in New York the right to counsel has been pushed far beyond the federal constitutional requirements and has become a major impediment to legitimate prosecutions.

For example, under federal law, the right to counsel begins with the commencement of formal criminal proceedings. Only New York, however, requires that formal proceedings begin (with the issuance of a complaint) before an arrest warrant is issued. Thus in cases for which an arrest warrant is needed, including many organized crime cases, New York effectively grants a right to counsel at an earlier stage than other jurisdictions.

Under New York law, unlike federal law, the right to counsel is not waivable outside the presence of counsel. In other words, the defendant cannot say, "OK, let's talk without the lawyer," unless the lawyer is sitting there. Since no lawyer representing guilty defendants ever agrees to such a thing, and since interrogations with counsel present are usually worthless, many criminal defendants who could be interrogated by the police in other jurisdictions cannot be interrogated in New York. And since, in cases requiring arrest warrants, the right to counsel obtains even before the defendant is arrested, in effect a defendant arrested under a warrant can never be interrogated.

New York's right-to-counsel rules also prevent the police from interrogating suspects who have hired a lawyer to represent them in the matter under investigation, even if proceedings have not begun and no for-

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mal action has been taken against them. Under federal law, the FBI or U.S. Attorney can send an agent or an informer (with or without a recording or listening device) to engage an (as yet unofficial) suspect in conversation with the hope of eliciting incriminating statements. In New York, if the suspect has already retained a lawyer in the case under investigation, he cannot be surreptitiously drawn into conversation: All interrogation must take place through his attorney—in other words, not at all. This rule is a boon to Cosa Nostra bosses who retain house counsels and to white collar defendants who have ongoing relationships with their attorneys.

Recently, for example, the Manhattan D.A.'s office was investigating the scheme of Cosmos Forms Ltd. to defraud the Guardian Life Insurance Company by inflating invoices for goods sold. A Guardian employee allegedly involved in the conspiracy agreed to wear a microphone and engaged the primary suspect in an incriminating conversation. The suspect, a woman named Judith Goldfinger, moved to suppress the evidence on the grounds that she had previously retained counsel in a federal civil case relating to these same matters and therefore could not be interrogated without her lawyer present. The lower court agreed, using doctrine set forth by the New York Court of Appeals, and suppressed the statements.

Even more incredibly, in 1981 the New York Court of Appeals in *People* v. *Bartolomeo* held that if a suspect had an attorney in an *unrelated* pending criminal case, any statements he made voluntarily to the police when arrested for the new crime had to be suppressed if counsel were not present. This case shaped a rule that for a decade benefited organized and career criminals with outstanding cases against them. Just recently, in *People* v. *Bing* (1990) the Court of Appeals reversed *Bartolomeo*, noting the anomaly of a rule that gave preferential treatment to repeat offenders over defendants with no pending prosecution.

Notwithstanding the Court's about-face in *Bing*, New York is left with a right to counsel rule that is not only overly generous to accused criminals, but also is so complicated that most police officers and many lawyers cannot understand it.

The Defendant's Right to Pre-Trial Statements of the Government's Witnesses

In 1990, in a standard "buy and bust" case, Mark Wallace was arrested for selling drugs to an undercover New York City cop. The police officer who watched the buy noted Wallace's identity on a scrap of paper. After Wallace was arrested, the police officer incorporated what he had written on the paper into his police report and discarded the paper. As required by law, the prosecutor gave a copy of the policeman's report to the defense. At Wallace's trial, however, it came out that the officer had recorded his first observations on the discarded scrap of paper, which of course had never been shown to the defense. On those grounds alone, the Court of Appeals overturned Wallace's conviction.

A much more notorious case made front-page headlines in March 1990 when a New York trial court reversed the attempted murder conviction of Richard Moore, a Black Panther leader who had been sent to prison in 1971 for firing a machine gun at the home of then New York District Attorney Frank Hogan, wounding two of his bodyguards. The conviction was reversed because at the time of Moore's trial the prosecution failed to turn over to the defense certain FBI documents concerning the case. In fact the prosecutor had not known the documents existed, and the material would have been of no help to Moore's defense. Nevertheless the court felt compelled to let Moore go (*People* v. *Bin-Wahad*, 1990).

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The core right the New York Court of Appeals believed itself to be protecting in these cases is the right of cross-examination, i.e., the right to confront one's accusers. The U.S. Supreme Court and Congress have long held that this right includes the right of the defense to examine the pretrial statements made by the prosecution's witnesses. The federal system's Jencks Act, for example, requires the prosecution to turn over the official signed statements of prosecution witnesses after those witnesses have testified at trial. The principle is obvious and fair: People are entitled to all the information being used to prosecute them. New York, however, has pushed this idea to an absurdity, so that New York State prosecutors live in fear of seeing cases torpedoed by an insignificant scrap of paper.

In 1961, in *People* v. *Rosario*, the Court of Appeals established a broader rule than the Jencks Act requires. The Court held that the defense is entitled to examine, before the prosecution and defense's opening statements at trial, the statements of the People's witnesses to the police, district attorney, or grand jury concerning the case. After *Rosario* was incorporated by statute into the state's criminal procedure law, the Court of Appeals and the lower courts interpreted it expansively, eventually requiring the prosecution to turn over to the defense practically everything a police officer writes, including notes, memo books, interview summaries, arrest reports, and daily activity reports, as well as—according to some court decisions—the statements of witnesses to private parties. Thus a New York State prosecutor is responsible for turning over to the defense a vast array of written material that may be of no consequence, some of which he may not even know about.

The great watershed in the life of *Rosario* was the Court of Appeal's decision in *People* v. *Ranghelle* in 1986. Patsy (a.k.a. Joseph) Ranghelle had been convicted of menacing a New York City Department of Sanitation officer who had come to serve a summons on him. Ranghelle threw a piece of wood at the officer and threatened to blow her head off with a nearby rifle. His conviction was reversed because the prosecution failed to turn over to the defense some redundant police reports, even though the reports were not in the prosecutor's possession, even though the prosecutor had made a good faith effort to obtain them from the police for the defense, and even though the prosecutor finally did obtain them for the defense, after the jury had been told that evidence was closed but before the summations.

In overturning Ranghelle's conviction the Court held that if the prosecution fails to turn over any *Rosario* information, a conviction must be automatically overturned. It does not matter if the missing document is only one of thousands in a complex prosecution, redundant with other documents that have been turned over to the defense, or has no bearing on the defendant's guilt.

Under federal law, failure to turn over information to which the defense is entitled does not require automatic reversal of a conviction. The court must first weigh the extent, prejudice, and bad faith of the prosecution's failure. In *Brady* v. *Maryland* (1962) and *United States* v. *Bagley*, (1985), the U.S. Supreme Court held that the prosecution is constitutionally required to turn over to the defense *exculpatory material*, that is, material that might raise questions about the defendant's guilt. But failure to do so does not necessarily require reversal. The judge must consider whether the withheld material would have had an effect on the outcome. If not he may rule the prosecutor's failure a harmless error leaving the conviction intact. In New York no *Rosario/Ranghelle* error can ever be harmless; reversal is mandatory.

If there was ever a hypertechnical rule that undermines the criminal justice process this is it. It warrants criticism on grounds of

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cost and resources alone. Under *Ranghelle*, prosecutions that have lasted for months and cost the taxpayers millions of dollars are reversed even though no real injustice was done nor core civil rights violated. In its elaboration of this rule, the Court of Appeals has expressed deep distrust of prosecutors and simultaneously provided a windfall to criminal defendants. Judge Joseph W. Bellacosa of the New York Court of Appeals has branded the ruling "a law enforcer's nightmare and a perpetrator's delight" (*People* v. *Jones*, 1987).

In 1990, the Office of Court Administration, on behalf of the judiciary, recommended that the Legislature pass a bill to allow for a good faith exception, eliminating the Ranghelle rule, "unless there is a reasonable possibility that such a failure might have contributed to the defendant's conviction." Like many other proposals to reform criminal procedures, this bill has gone nowhere.

New York State prosecutors live in fear of seeing cases torpedoed by an insignificant scrap of paper

Wiretapping

Electronic eavesdropping is an indispensable tool in investigating organized crime. Because of wiretapping, federal prosecutors have had spectacular success fighting Cosa Nostra and other mafia organizations over the last decade. New York State prosecutors, however, have not been able to use wiretapping nearly as effectively.

The federal government comprehensively regulates the use of wiretapping. In 1968 Congress passed Title III of the Omnibus Crime Control and Safe Streets Act. It permits wiretapping but includes important substantive and procedural safeguards. A law enforcement agency that wants to use wiretapping or another form of electronic eavesdropping must first convince a court that it has probable cause and has exhausted traditional means of obtaining the necessary evidence. Even if the judge grants the request, time limits are set for the eavesdropping. Law enforcement personnel must "minimize" the intrusion on the privacy of suspects by turning the recording device off unless incriminating information is being discussed. Each tape of intercepted communications must be properly "sealed" by a judge at the termination of the wiretap operation.

New York's Legislature and Court of Appeals have also generated a series of technical rules governing the sealing of tapes. While federal law requires the tapes be sealed by a judge at the conclusion of the operation, New York law requires sealing at the expiration of the original warrant and at the close of each extension. Failure to have the tapes sealed on time renders inadmissible both the tapes and any evidence derived from them after the obligation to seal arose (*People* v. *Weiss*, 1980).

The failure to follow the rules governing sealing has been dealt with very strictly. The Court of Appeals has held that failure to seal properly is grounds for automatic reversal of a conviction or suppression of the evidence regardless of whether the error was in good faith or *de minimis* (*People* v. *Sher*, 1976). In *People* v. *Gallina* (1985) the Court of Appeals held that a two-day delay could not be excused. And in the noted case of *People* v. *Winograd* (1986) the Court held that a delay in sealing tapes from a Saturday to the following Monday is inexcusable where law enforcement authorities offer no excuse other than an intervening weekend. There is no justification for

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this extraordinary emphasis on the timeliness of sealing. A single day's delay certainly does not increase the possibility that police might tamper with the tapes.

New York procedure also requires that the prosecution give notice to the defendant within 15 days after arraignment of its intention to rely on wiretap evidence. Under *Rosario*, this really means turning over all the papers on which the wiretap application was based so that the defendant can prepare his motion to suppress the wiretap evidence. If the prosecution inadvertently misses the 15th day, it loses all the evidence obtained from the wiretap unless it can show good cause for its delay.

Technical Fouls

The examples I have chosen are not aberrations, but typical of a large array of rules that especially encumber prosecutions of organized crime and other complex criminal investigations. If space had permitted, I could have easily multiplied examples.

It is unclear why New York's jurisprudence has so diverged from the federal and most state traditions. In part, no doubt, New York's rules reflect an unusually strong commitment to defendants' rights. Yet few of the procedures discussed here make any real contribution to the defense of civil rights and liberties. Most of these wooden and inflexible rules hinder or "punish" law enforcement for failing to adhere to secondary or tertiary procedures that are not closely linked to core liberties. Moreover, most of these technical obstacles redound much more to the benefit of organized crime figures and professional criminals than to the poor and naïve offenders who are the usual intended beneficiaries of expanded rights for criminal defendants.

Part of the explanation for New York's unusual criminal jurisprudence must lie in the institutional history and current personalities of the State Legislature and the Court of Appeals. It may be significant that no current member of the New York Court of Appeals has served as a criminal prosecutor. Moreover, a large number of New York legislators (and many legislative leaders) have practiced as, and are currently partners in law firms with, criminal defense lawyers. Perhaps our legislators and judges simply have an inadequate grasp of the necessities of modern law enforcement. Some prosecutors have suggested a cynical explanation for the Legislature's stance on these questions: Nearly all the criminal procedure rules discussed here are particularly frustrating to prosecutors of white collar crimes, including political corruption. Indeed Senate Codes Committee Chairman Dale Volker has been quoted as saying that the Legislature is disinclined to increase prosecutorial powers "when some legislators feel there are political prosecutions [for corruption] going on."

Whatever the reason for New York's unusual laws of criminal procedure, those procedures hinder law enforcement without enhancing core civil liberties. They extract from New Yorkers a high price in lost personal security, and in public and private corruption, with no appreciable payoff in return. ■

Hardly a day goes by, you know, that some innocent bystander ain't shot in New York City. All you got to do is be innocent and stand by and they're gonna shoot you. The other day, there was four innocent people shot in one day—four innocent people—in New York City. Amazing. It's kind of hard to *find* four innocent people in New York.

—*Will Rogers*

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URBANITIES

Our Universal Civilization

by

V. S. Naipaul

On October 30, 1990, V. S. Naipaul, considered by many to be the greatest living English language novelist, delivered the fourth annual Walter B. Wriston lecture in Public Policy, sponsored by the Manhattan Institute. Mr. Naipaul takes as his subject the "universal civilization" to which the Western values of tolerance, individualism, equality, and personal liberty have given birth. He describes the personal and philosophical turmoil of those who find themselves torn between their native civilizations and the values of this universal civilization. We are pleased to present his remarks here in full.

—Ed.

I've given this talk the title of Our Universal Civilization. It is a rather big title, and I am a little embarrassed by it. I feel I should explain how it came about. I have no unifying theory of things. To me situations and people are always specific, always of themselves. That is why one travels and writes: to find out. To work in the other way would be to know the answers before one knew the problems. That is a recognized way of working, I know, especially if one is a political or religious or racial missionary. But I would have found it hard.

That was why I thought, when this invitation to talk came, that it would be better for me to find out what kind of issues members of the Institute were interested in. Myron Magnet, a senior fellow of the Manhattan Institute, was in England at the time. We talked on the telephone; and then, some days later, he sent me a handwritten list of questions. They were very serious questions, very important. Are we—are communities—as strong only as our beliefs? Is it enough for beliefs or an ethical view to be passionately held? Does the passion give validity to the ethics? Are beliefs or ethical views arbitrary, or do they represent something essential in the cultures where they flourish?

It was easy to read through to some of the anxieties that lay behind the questions. There was a clear worry about certain fanaticisms "out there." At the same time there was a certain philosophical diffidence about how that anxiety could be expressed, since no one wants to use words or concepts that might boomerang on himself. You know how words can be used: I am civilized and steadfast; you are barbarian and fanati-

V. S. Naipaul has published twenty books of fiction and nonfiction. His most recent book, India: A Million Mutinies Now, *was published by Viking . . . Richard Brookhiser's latest book is* The Way of the Wasp, *published by the Free Press . . . Terry Williams, a writer and ethnographer, lives in New York City. He is an associate professor in sociology at the New School For Social Research. His new book,* The Crackhouse: Notes From the End of the Line, *will be published this fall by Addison-Wesley.*

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cal; he is primitive and blind. Of course, I was on the side of the questioner, and understood his drift. But I got to feel, over the next few days, and perhaps from my somewhat removed position, that I couldn't share the pessimism implied by the questions. I felt that the very pessimism of the questions, and their philosophical diffidence, defined the strength of the civilization out of which it issued. And so the theme of my talk, Our Universal Civilization, was given me.

I am not going to attempt to define this civilization. I will only speak of it in a personal way. It is the civilization, first of all, which gave me the idea of the writing vocation. It is the civilization in which I have been able to practice my vocation as a writer. To be a writer, you need—to start with—a certain kind of sensibility. The sensibility itself is created, or given direction, by an intellectual atmosphere.

Sometimes an atmosphere can be too refined, a civilization too achieved, too ritualized. Eleven years ago, when I was traveling in Java, I met a young man who wanted above everything else to be a poet and to live the life of the mind. This ambition had been given him by his modern education; but it was hard for the young man to explain to his mother exactly what he was up to. This mother was a person of culture and elegance; that should be stressed. She was elegant in visage and dress and speech; her manners were like art; they were Javanese court manners.

So I asked the young man—bearing in mind that we were in Java, where ancient epics live on in the popular art of puppet plays—"But isn't your mother secretly proud that you are a poet?" He said in English—I mention this to give a further measure of his education in his far-off Javanese town—"She wouldn't have even a sense of what being a poet is."

And the poet's friend and mentor, a teacher at the local university, amplified this. The friend said, "The only way he would have of making the mother understand what he is trying to do would be to suggest that he is being a poet in the classical tradition. And she would find this absurd. She would reject it as an impossibility." It would be rejected as an impossibility, because for the poet's mother the epics of her country—and to her they would have been like sacred texts—already existed, had already been written. They had only to be learned or consulted.

For the mother, all poetry had already been written. That particular book, it might be said, was closed: It was part of the perfection of her culture. To be told by her son, who was 28, not all that young, that he was hoping to be a poet would be like a devout mother in another culture asking her writer son what he intended to write next, and getting the reply, "I am thinking of adding a book to the Bible." Or, to attempt another comparison, the young man would be like the character in the story by Borges who had taken on himself the task of rewriting Don Quixote. Not just retelling the story, or copying out the Cervantes original; but seeking, by an extraordinary process of mind-clearing and re-creation, to arrive—without copying or falsity, and purely through original thought—at a narrative coinciding word by word with the Cervantes book.

I understood the predicament of the young man in Central Java. His background, after all, was not far removed from the Hindu aspect of my own Trinidad background. We were an agricultural immigrant community from India. The ambition to become a writer, the introduction to writing and ideas about writing, had been given me by my father. He was born in 1906, the grandson of someone who had come to Trinidad as a

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baby. And somehow, in spite of all the discouragements of the society of that small agricultural colony, the wish to be a writer had come to my father; and he had made himself into a journalist, even with the limited opportunities for journalism that existed in that colony.

We were a people of ritual and sacred texts. We also had our epics—and they were the very epics of Java; we heard them constantly sung or chanted. But it couldn't be said that we were a literary people. Our literature, our texts, didn't commit us to an exploration of our world; rather, they were cultural markers, giving us a sense of the wholeness of our world, and the alienness of what lay outside. I don't believe that, in his family, anyone before my father would have thought of original literary composition. That idea came to my father in Trinidad with the English language; somehow, in spite of the colonial discouragements of the place, an idea of the high civilization connected with the language came to my father; and he was given some knowledge of literary forms. Sensibility is not enough if you are going to be a writer. You need to arrive at the forms that can contain or carry your sensibility; and literary forms—whether in poetry or drama, or prose fiction—are artificial, and ever changing.

This was a part of what was passed on to me. At a very early age—in all the poverty and bareness of Trinidad, far away, with a population of half a million—I was given the ambition to write books, and specifically to write novels, which my father had presented to me as the highest form. But books are not created just in the mind. Books are physical objects. To write them, you need a certain kind of sensibility; you need a language, and a certain gift of language; and you need to possess a particular literary form. To get your name on the spine of the created physical object, you need a vast apparatus outside yourself. You need publishers, editors, designers, printers, binders; booksellers, critics, newspapers and magazines and television where the critics can say what they think of the book; and, of course, buyers and readers.

I want to stress this mundane side of things, because it is easy to take for granted; it is easy to think of writing only in its personal, romantic aspect. Writing is a private act; but the published book, when it starts to live, speaks of the cooperation of a particular kind of society. The society has a certain degree of commercial organization. It also has certain cultural or imaginative needs. It doesn't believe that all poetry has already been written. It needs new stimuli, new writing; and it has the means of judging the new things that are offered.

This kind of society didn't exist in Trinidad. It was necessary, therefore, if I was going to be a writer, and live by my books, to travel out to that kind of society where the writing life was possible. This meant, for me at that time, going to England. I was traveling from the periphery, the margin, to what to me was the cen-

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ter; and it was my hope that, at the center, room would be made for me. I was asking a lot, asking, in fact, more of the center than of my own society. The center, after all, had its own interests, its own worldview, its own ideas of what it wanted in novels. And it still does. My subjects were far-off, but a little room was made for me in the England of the 1950s. I was able to become a writer, and to grow in the profession. It took time; I was forty—and had been publishing in England for 15 years—before a book of mine was seriously published in the United States.

But I always recognized, in England in the 1950s, that as someone with a writing vocation there was nowhere else for me to go. And if I have to describe the universal civilization I would say it is the civilization that both gave the prompting and the idea of the literary vocation; and also gave the means to fulfill that prompting; the civilization that enabled me to make that journey from the periphery to the center; the civilization that links me not only to this audience but also to that now not-so-young man in Java whose background was as ritualized as my own, and on whom—as on me—the outer world had worked, and given the ambition to write.

It is easier today for someone setting out to be a writer from places like Java or Trinidad; subjects once far-off are no longer so. But I have never been able to take my career for granted. I know that there are still large tracts of the world where the cultural or economic conditions I described a while ago do not obtain, and someone like myself would not have been able to become a writer. I couldn't have become a writer in the Mohammedan world; in China; in Japan—the Japanese make room for the literary culture only of the countries they see themselves competing against. I couldn't have become the kind of writer I am in Eastern Europe or the Soviet Union or black Africa. I don't think I could have taken my gifts even to India.

You will understand, then, how important it was to me to know when I was young that I could make this journey from the margin to the center, from Trinidad to London. The ambition to be a writer assumed that this was possible. So, in fact, I was taking it for granted, in spite of my ancestry and Trinidad background, that with another, equally important part of myself I was part of a larger civilization. I suppose the same could be said of my father, though he was closer to the ritual ways of our Hindu and Indian past.

But I never formulated the idea of the universal civilization until quite recently—until 11 years ago, when I traveled for many months in a number of non-Arab Muslim countries to try to understand what had driven them to their rage. That Muslim rage was just beginning to be apparent. "Fundamentalism"—in connection with the Mohammedan world—was not a word often used by the newspapers in 1979; they hadn't yet worked through to that concept. What they spoke of more was "the revival of Islam." And that, indeed, to anyone contemplating it from a distance, was a puzzle. Islam, which had apparently had so little to offer its adherents in the last century and in the first half of this—what did it have to offer to an infinitely more educated, infinitely faster world in the later years of the century?

The adaptation of my own family and Indian community to colonial Trinidad—and, through that, to the twentieth century—hadn't been easy. It had been painful for us, an Asian people, living instinctive, ritualized lives, to awaken to an idea of our history and to learn to live with the idea of our political helplessness. There had been very difficult social adjustments as well. For example, in our culture marriages had always been arranged; it took some time, and many

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damaged lives, for us to arrive at the other way. All of this went with the personal intellectual growth I have described.

And I thought, when I began to travel in the Muslim world, that I would be traveling among people who would be like the people of my own community. A large proportion of Indians were Muslims; we had both had a similar nineteenth-century imperial or colonial history. I thought that religion was an accidental difference. I thought, as people said, that faith was faith; that people living at a certain time in history would have felt the same urges.

But it wasn't like that. The Muslims said that their religion was fundamental to them. And it was: It made for an immense difference. I have to stress that I was traveling in the non-Arab Muslim world. Islam began as an Arab religion; it spread as an Arab empire. In Iran, Pakistan, Malaysia, Indonesia—the countries of my itinerary—I was traveling, therefore, among people who had been converted to what was an alien faith. I was traveling among people who had had to make a double adjustment—an adjustment to the European empires of the nineteenth and twentieth centuries; and an earlier adjustment to the Arab faith. You might almost say that I was among people who had been doubly colonized, doubly removed from themselves.

I couldn't have become a writer in the Mohammedan world, in China, in Japan, in Eastern Europe, the Soviet Union, black Africa, or even in India

I was soon to discover that no colonization had been so thorough as the colonization that had come with the Arab faith. Colonized or defeated peoples can begin to distrust themselves. In the Muslim countries I am talking about, this distrust had all the force of religion. It was an article of the Arab faith that everything before the faith was wrong, misguided, heretical; there was no room in the heart or mind of these believers for their pre-Mohammedan past. So ideas of history here were quite different from ideas of history elsewhere; there was no wish here to go back as far as possible into the past, and to learn as much as possible about the past.

Persia had a great past; it had been the rival in classical times of Greece and Rome. But you wouldn't have believed it in Iran in 1979; for the Iranians the glory and the truth had begun with the coming of Islam. Pakistan was a very new Muslim state. But the land was very old. In Pakistan were the ruins of the very old cities of Mohenjo-Daro and Harappa. Fabulous ruins, the discovery of which earlier this century had given a new idea of the history of the subcontinent. Not only pre-Islamic ruins; but possibly also pre-Hindu. There was an archaeological department, inherited from British days, that looked after the sites. But there was, especially with the growth of fundamentalism, a contrary current. This was expressed in a letter to a newspaper while I was there. The ruins of the cities, the writer said, should be hung with quotations from the Koran, saying that this was what befell unbelievers.

The faith abolished the past. And when the past was abolished like this, more than an idea of history suffered. Human behavior, and ideals of good behavior, could suffer. When I was in Pakistan, the newspapers were running articles to mark the anniversary of the Arab conquest of Sind. This was the first part of the Indian subcontinent to be conquered by the Arabs. It

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occurred at the beginning of the eighth century. The kingdom of Sind—an enormous area: the southern half of Afghanistan, the southern half of Pakistan—at that time was a Hindu-Buddhist kingdom. The Brahmans didn't really understand the outside world; the Buddhists didn't believe in taking life. It was a kingdom waiting to be conquered, you might say. But it took a long time for Sind to be conquered; it was very far away from the Arab heartland, across immense deserts. Six or seven Arab expeditions foundered.

At one time the third caliph himself, the third successor to the Prophet, called one of his lieutenants and said, "O Hakim, have you seen Hindustan and learned all about it?" Hakim said, "Yes, O commander of the faithful." The caliph said, "Give us a description of it." And all Hakim's frustration and bitterness came out in his reply. "Its water is dark and dirty," Hakim said. "Its fruit is bitter and poisonous. Its land is stony and its earth is salt. A small army will soon be annihilated, and a large one will soon die of hunger."

This should have been enough for the caliph. But, looking still for some little encouragement, he asked Hakim, "What about the people? Are they faithful, or do they break their word?" Clearly, faithful people would have been easier to subdue, easier to lighten of their money. But Hakim almost spat out his reply. "The people are treacherous and deceitful," Hakim said. And at that the caliph did take fright—the people of Sind sounded quite an enemy—and he ordered that the conquest of Sind was to be attempted no more.

But Sind was too tempting. The Arabs tried again and again. The organization and the drive and the attitudes of the Arabs, fortified by their new faith, in a world still tribal and disorganized, easy to conquer, the drive of the Arabs was remarkably like that of the Spaniards in the New World eight hundred years later—and this was not surprising, since the Spaniards themselves had been conquered and ruled by the Arabs for some centuries. Spain, in fact, fell to the Arabs at about the same time as Sind did.

The final conquest of Sind was set on foot from Iraq, and was superintended from the town of Kufa by Hajjaj, the governor of Iraq. The topicality is fortuitous, I assure you. The aim of the Arab conquest of Sind—and this conquest had been thought about almost as soon as the faith had been established—the aim of the conquest had always been the acquiring of slaves and plunder, rather than the spreading of the faith. And when finally Hajjaj, the governor of Iraq, received the head of the king of Sind, together with sixty thousand slaves from Sind, and the royal one-fifth of the loot of Sind, that one-fifth decreed by the religious law, he

> placed his forehead on the ground and offered prayers of thanksgiving, by two genuflections to God, and praised him, saying: 'Now have I got all the treasures, whether open or buried, as well as other wealth, and the kingdom of the world.'

There was a famous mosque in the town of Kufa. Hajjaj called the people there, and from the pulpit he told them: "Good news and good luck to the people of Syria and Arabia, whom I congratulate on the conquest of Sind and on the possession of immense wealth . . . which the great and omnipotent God has kindly bestowed on them."

I am quoting from a translation of a thirteenth-century Persian text, the Chachnama. It is the main source for the story of the conquest of Sind. It is a surprisingly modern piece of writing, a good fast narrative, with catching detail and dialogue. It tells a terrible story of plunder and killing—the Arab army was allowed to kill

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for days after the fall of every town in Sind; and then the plunder was assessed and distributed to the soldiers, after the fifth had been set aside for the caliph. But to the Persian writer, the story—written five hundred years after the conquest—is only "a pleasant tale of conquest." It is Arab or Muslim imperial genre writing. After five hundred years—and though the Mongols are about to break through—the faith still holds; there is no new moral angle on the destruction of the kingdom of Sind.

This was the event that was being commemorated by articles in the newspapers when I was in Pakistan in 1979. There was an article by a military man about the successful Arab general. The article tried to be fair, in a military way, to the armies of both sides. It drew a rebuke from the chairman of the National Commission of Historical and Cultural Research.

This was what the chairman said: "Employment of appropriate phraseology is necessary when one is projecting the image of a hero. Expressions such as 'invader' and 'defenders' and 'the Indian army' fighting bravely but not being quick enough to 'fall upon the withdrawing enemy' loom large in the article. It is further marred by some imbalanced statements such as follows: 'Had Raja Dahar defended the Indus heroically, and stopped Qasim from crossing it, the history of this subcontinent would have been quite different.' One fails to understand"—this is the chairman of the Commission of Historical and Cultural Research—"whether the writer is applauding the defeat of the hero or lamenting the defeat of his rival." After 1,200 years, the holy war is still being fought. The hero is the Arab invader, bringer of the faith. The rival whose defeat is to be applauded—and I was reading this in Sind—is the man of Sind.

To possess the faith was to possess the only truth; and possession of this truth set many things on its head. To believe that the time before the coming of the faith was a time of error distorted more than an idea of history. What lay within the faith was to be judged in one way; what lay outside it was to be judged in another. The faith altered values, ideas of good behavior, human judgments.

Europe has been in the East for a long time, and there has been Muslim anxiety there for almost all of this time

So I not only began to understand what people in Pakistan meant when they told me that Islam was a complete way of life, affecting everything; I began to understand that—though it might be said that we had shared a common subcontinental origin—I had traveled a different way. I began to formulate the idea of the universal civilization—which, growing up in Trinidad, I had lived in or been part of without quite knowing that I did so.

Starting with that Hindu background of the instinctive, ritualized life; growing up in the unpromising conditions of colonial Trinidad; I had—through the process I have tried to describe earlier—gone through many stages of knowledge and self-knowledge. I had a better idea of Indian history and Indian art than my grandparents had. They possessed rituals, epics, myth; their identity lay within that light; beyond that light there was darkness, which they wouldn't have been able to penetrate. I didn't possess the rituals and the myths; I saw them at a distance. But I had in exchange been granted the ideas of inquiry and the tools of scholarship. Identity for me was a more complicated matter. Many things had gone to make me. But there was

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no problem for me there. Whole accumulations of scholarship were mine, in the sense that I had access to them. I could carry four or five or six different cultural ideas in my head. I knew about my ancestry and my ancestral culture; I knew about the history of India and its political status; I knew where I was born, and I knew the history of the place; I had a sense of the New World. I knew about the literary forms I was interested in; and I knew about the journey I would have to make to the center in order to exercise the vocation I had given myself.

Now, traveling among non-Arab Muslims, I found myself among a colonized people who had been stripped by their faith of all that expanding intellectual life, all the varied life of the mind and senses, the expanding cultural and historical knowledge of the world that I had been growing into on the other side of the world. I was among people whose identity was more or less contained in the faith. I was among people who wished to be pure.

In Malaysia they were desperate to rid themselves of their past, desperate to cleanse their people of tribal or animist practices, all the subconscious life, freighted with the past, that links people to the earth on which they walk, all the rich folk life that awakened people elsewhere cultivate and dredge for its poetry. They wished, the more earnest of these Malay Muslims, to be nothing but their imported Arab faith; I got the impression that they would have liked, ideally, to make their minds and souls a blank, an emptiness, so that they could be nothing but their faith. Such effort; such self-imposed tyranny. No colonization could have been greater than this colonization by the faith.

While the faith held, while it appeared to be unchallenged, the world perhaps held together. But when there appeared this powerful, encompassing civilization from outside, men didn't know what to do. They could do only what they were capable of doing; they could only become more assiduous in the faith, more self-wounding, more ready to turn away from what they didn't feel they could master.

Muslim fundamentalism in places like Malaysia and Indonesia seems new. But Europe has been in the East for a long time, and there has been Muslim anxiety there for almost all of this time. This anxiety, this meeting of the two opposed worlds, the outgoing world of Europe and the closed world of the faith, was spotted a hundred years ago by the writer Joseph Conrad, who, with his remote Polish background and his wish as a traveler to render exactly what he saw, was able at a time of high imperialism to go far beyond the imperialistic, surface ways of writing about the East and its native peoples.

To Conrad the world he traveled in was new; he looked hard at it. There is a quotation I would like to read from Conrad's second book, published in 1896, nearly one hundred years ago, in which he catches something of the Muslim hysteria of that time—the hysteria which, a hundred years later, with greater education and wealth of the native peoples, and the withdrawing of empires, was to turn into the fundamentalism we hear about:

> A half-naked, betel-chewing pessimist stood upon the bank of the tropical river, on the edge of the still and immense forests; a man angry, powerless, empty-handed, with a cry of bitter discontent ready on his lips; a cry that, had it come out, would have run through the virgin solitudes of the woods as true, as great, as profound, as any philosophical shriek that ever came from the depths of an easy-chair to disturb the impure wilderness of chimneys and roofs.

Philosophical hysteria—those were the words I wanted to give to you, and I think

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they still apply. They bring me back to the list of questions and issues that the senior fellow of the Manhattan Institute, Myron Magnet, sent to me when he was in England last summer. Why, he asked, are certain societies or groups content to enjoy the fruits of progress, while affecting to despise the conditions that promote that progress? What belief system do they oppose to it? and then, more specifically: Why is Islam held up in opposition to Western values? The answer, I believe, is that philosophical hysteria. It is not an easy thing to define or understand, and the Muslim spokesmen do not really help. They speak clichés, but that might only be because they perhaps have no way of expressing what they feel. And some have overriding political causes; and others are really religious missionaries rather than scholars.

But years ago, while the Shah still ruled, there appeared in the United States a small novel by a young Iranian woman that in its subdued, unpolitical way foreshadowed the hysteria that was to come. The novel was called *Foreigner*; the author was Nahid Rachlin. Perhaps it was as well that the novel appeared while the Shah ruled, and had to avoid politics; it is just possible that the delicate feeling of this novel might have been made trivial or ordinary if it had run into political protest.

The central figure of the book is a young Iranian woman who does research work in Boston as a biologist. She is married to an American, and she might seem to be all right, well adapted. But when she goes back on a holiday to Tehran she loses her balance. She has some trouble with the bureaucracy. She can't get an exit visa; she begins to feel lost. She is disturbed by memories of her crowded, oppressive Iranian childhood, with its prurient sexual intimations; disturbed by what remains of her old family life; disturbed by the overgrown, thuggish city, full of "Western" buildings. And that is interesting, that use of "Western" rather than big: It is as though the strangeness of the outside world has come to Tehran itself.

Disturbed in this way, the young woman reflects on her time in the United States. It is not the time of clarity, as it might have once appeared. She sees it now to be a time of emptiness. She can't say why she has lived the American life. Sexually and socially—in spite of her apparent success—she has never been in control; and she cannot say, either, why she has been doing the research work she has been doing. All this is very subtly and effectively done; we can see that the young woman was not prepared for the movement between civilizations, the movement out of the shut-in Iranian world, where the faith was the complete way, filled everything, left no spare corner of the mind or will or soul, to the other world where it was necessary to be an individual and responsible—where people developed vocations, were stirred by ambition and achievement, and believed in perfectibility. Once

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we understand or have an intimation of that, we see, with the central figure of the novel, what a torment and emptiness that automatic, imitative life in Boston has been for her.

Now, in her distress, she falls ill. She goes to a hospital. The doctor there understands her unhappiness. He too has spent some time in the United States; when he came back, he said, he soothed himself by visiting mosques and shrines for a month. He tells the young woman that her pain comes from an old ulcer. "What you have," he says, in his melancholy, seductive way, "is a Western disease." And the research biologist eventually arrives at a decision. She will give up that Boston-imposed life of the intellect and meaningless work; she will turn back on the American emptiness; she will stay in Iran and put on the veil. She will do as the doctor did; she will visit shrines and mosques. Having decided that, she becomes happier than she has ever been.

Immensely satisfying, that renunciation. But it is intellectually flawed: It assumes that there will continue to be people striving out there, in the stressed world, making drugs and medical equipment, to keep the Iranian doctor's hospital going.

Again and again, on my Islamic journey in 1979, I found a similar unconscious contradiction in people's attitudes. I remember especially a newspaper editor in Tehran. His paper had been at the heart of the revolution. In the middle of 1979 it was busy, in a state of glory. Seven months later, when I went back to Tehran, it had lost its heart; the once busy main room was empty; all but two of the staff had disappeared. The American embassy had been seized; a financial crisis had followed; many foreign firms had closed down; advertising had dried up; the newspaper editor could hardly see his way ahead; every issue of the paper lost money; waiting for the crisis to end, the editor, it might be said, had become as much a hostage as the diplomats. He also, as I now learned, had two sons of university age. One was studying in the United States; the other had applied for a visa, but then the hostage crisis had occurred. This was news to me—that the United States should have been so important to the sons of one of the spokesmen of the Islamic revolution. I told the editor I was surprised. He said, speaking especially of the son waiting for the visa, "It's his future."

Emotional satisfaction on the one hand; thought for the future on the other. The editor was as divided as nearly everyone else. One of Joseph Conrad's earliest stories of the East Indies, from the 1890s, was about a local raja or chieftain, a murderous man, a Muslim (though it is never explicitly said), who in a crisis, having lost his magical counselor, swims out one night to one of the English merchant ships in the harbor to ask the sailors, representatives of the immense power that had come from the other end of the world, for an amulet, a magical charm. The sailors are at a loss; but then someone among them gives the raja a British coin, a sixpence commemorating Queen Victoria's jubilee; and the raja is well pleased. Conrad didn't treat the story as a joke; he loaded it with philosophical implications for both sides, and I feel now that he saw truly.

In the one hundred years since that story, the wealth of the world has grown, power has grown, education has spread; the disturbance, the philosophical shriek, has been amplified. The division in the revolu-

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tionary editor's spirit, and the renunciation of the fictional biologist, both contain a tribute—unacknowledged, but all the more profound—to the universal civilization. Simple charms alone cannot be acquired from it; other, difficult things come with it as well: ambition, endeavor, individuality.

The universal civilization has been a long time in the making. It wasn't always universal; it wasn't always as attractive as it is today. The expansion of Europe gave it for at least three centuries a racial taint, which still causes pain. In Trinidad I grew up in the last days of that kind of racialism. And that, perhaps, has given me a greater appreciation of the immense changes that have taken place since the end of the war, the extraordinary attempt of this civilization to accommodate the rest of the world, and all the currents of that world's thought.

My discovery as a child of the Christian precept, Do unto others as you would have others do unto you, dazzled me

I come back now to the first questions Myron Magnet put to me earlier this year. Are we only as strong as our beliefs? Is it sufficient merely to hold a world view, an ethical view, intensely? You will understand the anxieties behind the questions. The questions, of course, for all their apparent pessimism, are loaded; they contain their own answers. But they are also genuinely double-edged. For that reason they can also be seen as a reaching out to a far-off and sometimes hostile system of fixed belief; they can be seen as an aspect of the universality of our civilization at this period. Philosophical diffidence meets philosophical hysteria; and the diffident man is, at the end, the more in control.

Because my movement within this civilization has been from the periphery to the center, I may have seen or felt certain things more freshly than people to whom those things were everyday. One such thing was my discovery as a child, a child worried about pain and cruelty, of the Christian precept, Do unto others as you would have others do unto you. There was no such human consolation in the Hinduism I grew up with, and—though I have never had any religious faith—the simple idea was, and is, dazzling to me, perfect as a guide to human behavior.

A later realization—I suppose I have sensed it most of my life, but I have understood it philosophically only during the preparation of this talk—has been the beauty of the idea of the pursuit of happiness. Familiar words, easy to take for granted; easy to misconstrue. This idea of the pursuit of happiness is at the heart of the attractiveness of the civilization to so many outside it or on its periphery. I find it marvelous to contemplate to what an extent, after two centuries, and after the terrible history of the earlier part of this century, the idea has come to a kind of fruition. It is an elastic idea; it fits all men. It implies a certain kind of society, a certain kind of awakened spirit. I don't imagine my father's parents would have been able to understand the idea. So much is contained in it: the idea of the individual, responsibility, choice, the life of the intellect, the idea of vocation and perfectibility and achievement. It is an immense human idea. It cannot be reduced to a fixed system. It cannot generate fanaticism. But it is known to exist; and because of that, other more rigid systems in the end blow away.

The Pierre,
New York
30 October 1990

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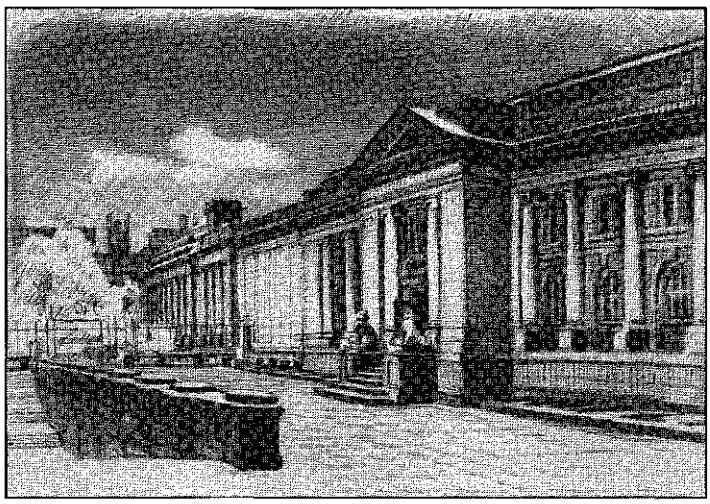
Miles from Museum Mile

by

Richard Brookhiser

Great cities display their cultural treasures in serried ranks, as on Fifth Avenue's Museum Mile: the Frick, the Met, the Cooper-Hewitt, the Guggenheim, all strung out like divisions in one of General Schwarzkopf's envelopments. But a truly great city also tucks some of its treasures away in odd corners, for odd reasons, as if to indicate the supply is endless.



THE HISPANIC SOCIETY

The Hispanic Society stands on Audubon Terrace, at 155th Street and Broadway, the centerpiece of a complex of museums and learned societies. The Museum of the American Indian and the American Numismatic Society flank it, and the American Academy of Arts and Letters is a stroll away. The buildings make an odd group. Individually, they are impressive structures, with Corinthian capitals and imposing Renaissance doorways. But they have been huddled together along a narrow, claustrophobic courtyard, giving the effect of a limestone subway platform. The grandiose equestrian statue of El Cid, which stands in front of the Hispanic Society, looks as if it has just missed the local.

The complex was a family project. Collis Potter Huntington, a nineteenth-century railroad magnate (Central Pacific, Southern Pacific, Chesapeake and Ohio) generated the cash. Archer Milton Huntington, his son, spent it. Charles Pratt Huntington, a nephew of Archer's, was the architect, and Anna Hyatt Huntington, Archer's wife, sculpted El Cid. Spain was not an obvious object of interest for a family of Anglo-Saxon millionaires. For several centuries, what an English-speaking person thought of when he thought of Spain was, at best, Gypsies, bandits, and Don Quixote; at worst, the Armada, the Inquisition, and "The Pit and the Pendulum." The Columbus quatercentenary in 1892 would have improved Spain's image in America. The Spanish-American War, six years later, annihilated Spain's last remnant of world power, and hence, its ability to scandalize. Whatever the reasons, the Hispanic Society, devoted to the advancement of the study of Spanish and Portuguese culture, opened its doors in 1904.

These doors are guarded by a pair of stone lions, haughtier than those at the New York Public Library. Inside, you may feel that they have done their work too well, for the place is as empty of milling visitors as a cave in *Tales from the Alhambra*. The guards seem roused from enchanted slumbers. The day I went, the guard on the gallery level switched on the spotlights for my benefit.

The Society's collection includes artifacts—tiles, tombs, carpets. There are several paintings by Velásquez, as well as eight by

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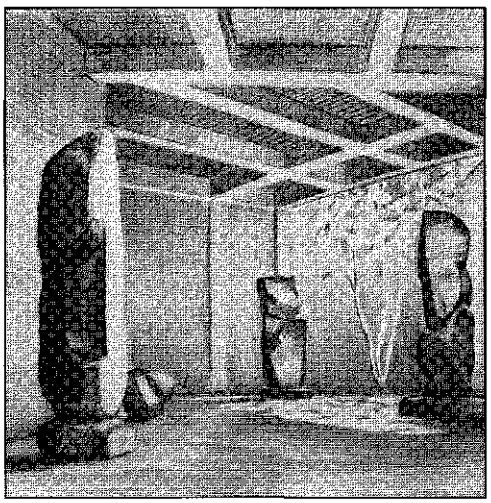
El Greco or his school. Three of the best paintings focus on clothes—a Duke of Alba, by Antonio Moro, encased in armor so brilliant you can almost see your own reflection in it, Goya's famous portrait of the Duchess of Alba, and his man named Pedro Mocarte. Moro's Duke can stand up to his own wardrobe, but Goya's subjects are simply outshone by their garments—so much that one suspects they must have been conscious of their own insignificance. Murillo, Zubarán, Degas, Morales, and the murals of Sorolla are also represented in the collection.

The best piece in the entire museum, however, is a sculpture, a thirteenth-century Mater Dolorosa from north central Spain. Here are no games of appearance and reality, no play of irony. This Virgin, evidently taken from a church wall, leans forward into the room, hands over her breast. There is pain and sorrow, and maybe anger, in her look; but what strikes you is her concentrated attention. Here is the energy that propelled the Spaniards from the condition of truculent barbarians, about as important in the world as Scottish Highlanders, to the shores of California and the Philippines, or to sainthood.



THE ISAMU NOGUCHI GARDEN MUSEUM

The Hispanic Society suffers from a bad location. Clearly, the Huntingtons expected the mainstream of city life to keep flowing north. What flowed north instead were the poor, or the suburbs. "North," thinks a John Updike character being taken by his mother to the Academy and Institute of Arts and Letters, "was nothing but Grant's Tomb, and Harlem, and Yankee Stadium. . . . North of that yawned the foreign vastness." Yet people do manage to get to Audubon Terrace. The day I got there, the Museum of the American Indian, whose collection has been slated to be parceled out between the old Customs House and the Smithsonian in Washington, was full and bustling.

The Hispanic Society has been sideswiped by changes in attitude as well as urban geography. Today, it would be assumed that a group calling itself Hispanic was devoted to affirmative action or the redrawing of City Council districts. If it had anything to do with art, it would be the art of the Aztecs and Frida Kahlo. Spain, imperial and Catholic, is as unlovable to us as it once was to Elizabeth I (albeit for different reasons). Even Columbus, coming up on his fifth centenary, strikes some Americans as a genocidal ecoterrorist, slaughtering Arawaks and destroying habitats: In an era when we feel guilty about our Spanish discoverer, we are unlikely to be interested in discovering Spanish civilization.

The Isamu Noguchi Garden Museum is even more thoroughly hidden, in a converted warehouse on Vernon Boulevard in Long Island City. You can take the R to its Broadway stop and walk west, or ride a special bus that shuttles from the headquarters of the Asia Society on Park Avenue. If you take the bus, you can see Manhattanites carrying themselves with the self-conscious venturesomeness of nineteenth-century Englishmen going east of Suez.

Isamu Noguchi (1904-1989), son of a Japanese father and an American mother, was raised in Japan and Indiana. His first teacher, Gutzun Borglum, the man who sculpted Mount Rushmore, told him he

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would never be an artist. Fortunately, Constantin Brancusi was more encouraging. Several of Noguchi's subsequent creations are on view in Manhattan: an early relief, in the Socialist/Art Deco style, over the door of the Associated Press building in Rockefeller Center; a huge red cube, balancing on a point, in front of the Marine Midland building downtown (just the kind of sculpture about which Tom Wolfe would be witty). But his work is best seen here, in a collection of a hundred-odd pieces, which he opened four years before his death.

The outside walls of the museum present a blank to the neighborhood, which is all right since the neighborhood, except for a few houses, presents a blank to the museum. Inside, the space has a calculatedly unfinished look, as if the art might be forklifted out at any moment and replaced with a shipment of TV sets. Through the small windows of the second floor come glimpses of unconverted warehouses and the Manhattan skyline, remote and glittering, as the Kramdens might have seen it. One corner of the site yields a very different view. It has been turned into a modern version of a Japanese garden, leafy but austere, with sculptures looming or lying on their sides, and a hypnotic fountain.

One of the first pieces past the entrance, "The Stone Within," helps give you the hang of what follows. It is a thick cylinder of basalt, standing on end. The top and the bottom have been roughly broken off, and show a brown color, as if rusted. Moving inward, there are two bands of white spots, chisel marks. The center of the column is a smooth and polished blackness. Noguchi wrote of this piece that he had found "beneath the skin, the brilliance of matter." But the dark core also looks like space—a starless night sky. Noguchi's sculptures demand, and induce, meditation. The more you ponder, the more you see.

Sometimes you see something surprisingly representational. "Planet in Transit #1" looks just like one of those *Times* Science Section diagrams of the latest theory of how new universes are created. "Night Wind," a strip of black granite set on a wooden base, does suggest wind rushing through trees. Most of the pieces, though, leave the meaning up to you—and to the stones.

The seclusion of Noguchi's museum, unlike that of the Hispanic Society, is deliberate. The Goyas and the El Grecos, gathered by collectors, were marooned by fashion. The Noguchis were assembled by the artist, who willed their isolation. In the nineteenth century, he would have fled up the Hudson to a landscaped hilltop, like Frederick Edwin Church. The aesthetic, and the art market, of this century keep artists in the city, and romantic bohemians choose warehouses in Queens. Perhaps one day a century hence the Noguchi collection will be scooped up and plunked in the Met. One hopes not. New York would lose thereby some of the carelessness of abundance.

Letter from a Crackhouse

by

Terry Williams

Washington Heights lies just to the north of Harlem, between 155th and Dyckman Street. Through the years, it has been transformed from an elegant brownstone outpost of the upper classes to a refuge for successive generations of tired and poor folks yearning to breathe free. Today the neighborhood is a complex mosaic of newly arrived Dominicans, Ecuadorans, Koreans, and West Indians, overlaying the remaining earlier generations of Jews and Italians, a

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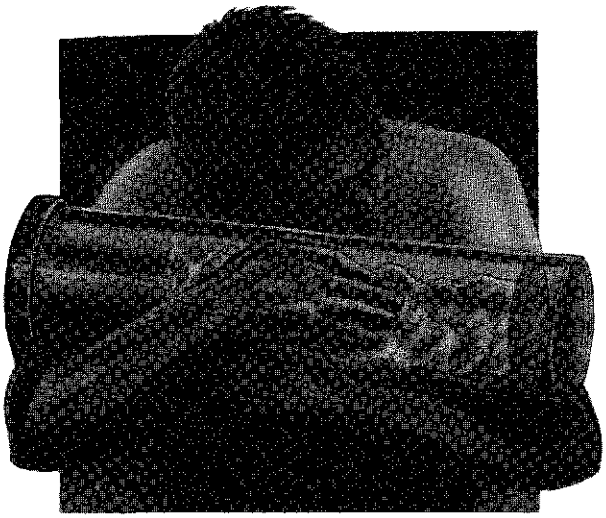
few of whose shops—fish stores and pizzerias—linger.

Tonight, I am standing in front of a five-story faded brownstone with green copper arches. Sitting between Leona's Discount House and Perfumery and Victor's Travel Agency, there is not much to distinguish it from hundreds of similar buildings in the neighborhood. Residents recognize it only by subtle signs: the jammed door, the furtive glances of white suburban buyers, the quick steps, the pocket-plunging users hiding their recently purchased cocaine packets, the unshaven lookouts with sunken eyes. It is a crackhouse.



I have spent a lot of time in the last three years in and out of crackhouses like this one, discovering a culture far different from what I imagined or what most people might expect from reading the daily press. A crackhouse is not, generally speaking, a marketplace but a home. It is not primarily a place where cocaine is sold, but where it is used. Most of the many crackhouses I have visited do not allow selling. Those that do are usually still in transition: former "crack spots" (retail sales operations) in the process of becoming true crackhouses. The typical crackhouse is created by an ex-cocaine dealer or his girlfriend. Crackhouse operators have descended from occasional cocaine use to heavy abuse. Enthralled to the drug, they can no longer deal resourcefully or profitably; setting up crackhousekeeping, they turn from primarily selling cocaine to primarily consuming it.

Crack, oddly enough, is not the drug of choice in most crackhouses. Most of the time, crackhouse habitués smoke freebase cocaine instead. Both base and crack are cocaine with the hydrochloride boiled away, but crack is usually pre-cooked and mixed with other chemicals, while base is not. Other drugs are represented as well: Cocaine sniffers mingle freely with freebasers, needle shooters, and marijuana smokers.

Tonight, as usual, many crackheads hide in the outside stairwells. Like sentinels they stand to the left and to the right, wearing jeans and half-laced sneakers. Staring blankly they wait for a buyer to beg from, a stranger to steer, a scaleboy (who manages day-to-day drug selling operations) to run an errand for, a friend to whom to complain. On a given night between ten and twenty people come to the crackhouse. Some are just visiting from out of town or stopping by on the way home from a party. But each crackhouse has its regulars, who live in the house and in many ways form a family.

Since the late 1970s there have been lots of new arrivals on the street: the mentally ill, the undomiciled, drug dealers, mendicants, and addicts. Many of these young men, women, and children, castoffs from the above-ground economy, become vassals of the vast underground multinational cocaine industry. By some estimates as many as 150,000 people in New York may be working in the cocaine trade on a daily basis. Some are selling. Others act as runners, stash catchers (who stand behind the build-

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ing and are thrown bags of drugs in the event of a police raid), steerers (who steer buyers to places where drugs are sold), and spotters (who keep watch and alert dealers of approaching police). Some are lookouts for the cocaine and crack-spot operators, pulling in thirty dollars, two meals, and a gram of crack for a 12-hour shift. Others pace crack-spot halls searching for specks of crack a hapless consumer may have dropped. But many or most are volunteer lookouts, hangers-on waiting to seize upon any opportunity that will reward them with enough crack to continue what one devotee calls "pleasurable suicide."

By the early Eighties, the fashionable sniffing culture which made a home for itself in after-hours clubs was dying out, and a new freebasing culture emerged in its place. Coca leaf cultivation in Bolivia, Peru, and Colombia exploded from 220,000 acres in 1980 to over 520,000 acres in 1988. The price of a kilo dropped from $50,000 in 1980 to roughly $12,000 today. Crack, packaged in small quantities and selling for as little as $2, offered a new chance to expand the market to a new class of consumer: the persistently poor. As the price plummeted, so did the social class of its users: Cocaine addiction moved from the glamour professions to the street.

By 1984, cocaine users were firmly ensconced in "basing galleries," or what later came to be called crackhouses. The frequenters of crackhouses were, by and large, of a different class than those who haunted after-hours clubs, which were designed to meet the needs of the largely upper- and upper-middle-class sniffers who first popularized cocaine use in this country. Addiction knows no class boundaries, but those who can command resources are rarely found in the confines of a ghetto crackhouse, an institution that emerged to meet the needs of poor addicts.

Inside the brownstone now, the stench is immediately recognizable: human odors mixed with garbage, crack freebase, musty halls, and unwashed floors. The entry hall retains signs of its former elegance: The marble floors are braided with yellow and red designs woven down the long hallway. From the ceiling light fixtures, gargoyles look down with their mouths wide open. Only two sculpted faces remain, however; the other fixtures have been replaced by cheap lightshades. Scattered about are vials, stems of glass, and broken lighters. It is three in the morning.

In the darkened hallway leading to the crackhouse, which properly speaking, is a single apartment in this building, I see two women standing against the wall lighting up a pipe. "You're losing it, you're losing it," the tall one with the hoarse voice mumbles, meaning the lighter is too hot and the crack is burning too fast to inhale. "Let's go inside," the other says.

The interior is not much to look at. A set of stark, neglected rooms provide a minimalist sensory arena for guests and family. The doors are always open to a steady mix of people: men and women, Latino and Asian, black and white—but more than half of its regulars are women under 25. Women do not run crackhouses, but they do play a key role in crackhouse culture.

Everybody is here to get high. The center of attention is a small glass vessel, known as a shaker, in which small particles of cocaine are mixed with baking soda and water. Once mixed and dried, the cocaine particles turn into a "rock," a hardened smokable mass. Preparing the drug is an aesthetic experience. Ritual is used to focus attention, to help strip the mind of outside concerns so total absorption can take place.

Those around the table sit with a glass pipe in each hand—"the devil's dick," one woman calls it, "because the more you smoke the more you want." They place a

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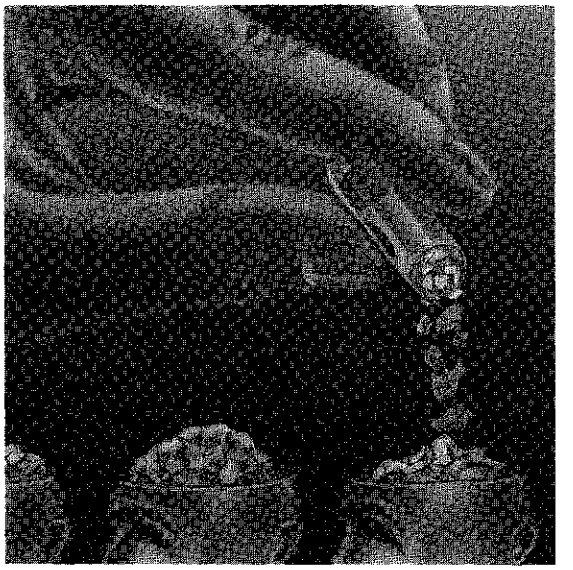
small pebble in the mouth of the pipe and inhale deeply.

Reactions to crack cocaine use vary. Some people become active, moving about the room, touching people and things. They rise slowly, retreat to a favorite location, a chair, a room, a corner spot—depending on whether they are interested in sex or just conversation. Others freeze momentarily in static poses, their eyes closed, trying to see "Scotty."

The crackhouse has a language all its own, much of which, oddly enough, has been transported from the old television show *Star Trek*. A search for new drugs, for example, is known as a "mission" (as in "Its five-year mission: To boldly go where no man has gone before"). And the characteristic cocaine high goes by the name of the Enterprise's chief engineer ("Beam me up, Scotty"). They speak about him intimately, in matter-of-fact tones, lending a surrealistic quality to the conversation. "The first time I met Scotty," or "when I fell in love with Scotty," or "when Scotty fell in love with me," are typical crackhouse utterances.



The smoke and despair are everywhere. Ambient smoke penetrates my skin, covering my clothing, rushing in through the pores. The place is so full of odors competing for the olfactory senses: marijuana, tobacco, sulfur matches, butane torches. The night rituals have begun: the cooking, the smoking, and the compulsive sex. As for the despair, all here know that the she-wolf, crack cocaine, is insatiable. The more she devours, the more she seeks to devour.

In case you have been wondering why I am here, I am an ethnographer. My profession is probing urban nocturnal subcultures that thrive far from the sunlit mainstream. Tonight, my Virgil is Headache, the street name of a Jewish man who turned to cocaine. Headache, who introduced me to the Washington Heights crack scene, is 46, short, and powerfully built. His hair is streaked with gray. He has cauliflower ears and a Kirk Douglas dimple. Born into a family of wealthy merchants, he graduated from college, married, and became a salesman. He bought real estate in Harlem and began using cocaine and procuring it for his wealthy downtown friends. To avoid being an absentee landowner, he says, Headache moved into this Washington Heights apartment. Eventually he started freebasing with his girlfriend, an imposing West Indian woman named Joan. His apartment became a crackhouse.

My Beatrice is a Puerto Rican woman named Monica. At 23, Monica is one of the crackhouse regulars, a woman with little means, large lips, and elegant vulgarity. She struts, talking constantly, pressing others to respond. Her blouse is open at the top, to tease. It is Monica who gives me precise instructions about how to navigate the many passageways where crack and women cohabit. Headache, like Virgil, could only take me so far. I need to know about the women, and Monica takes the lead.

"There ain't but two kinds of women out here," she says, lighting up her glass stem. "And that's touchers and buffers." The

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crack scene, she tells me, is the half-world of the touchers (women seeking affection) and the buffers (women who give oral sex). Both are looking to exchange their sexual labor for the pleasures of cocaine.

There are the nontouchers too, those who refuse to be touched because they have been touched too much. But it is the buffers that attract the regulars to the household, and thus keep the crackhouse together. "Most of the girls will give a bj, if they know the guy will give them something to smoke for the night," Monica says, lighting her pipe for the third time.

As in any household, there are certain instrumental relationships that keep the crackhouse from exploding into pure chaos. Headache is a worker, Monica is a buffer. He brings in money to keep crack in the pipe and food on the table. She keeps people coming into the house. When Headache's money runs out, Monica can trade sex for crack.

Three principal activities take up time and give cohesion to life in the crackhouse: missions, which bring in the cocaine; work (both regular and irregular jobs), which bring in the money to buy food and cocaine; and sex. Sex is the chief currency of the crackhouse. The crackhouse regulars here tonight have various sources of funds: Joan works odd jobs and occasionally delivers cocaine to middle-class clients. Headache works as a messenger on Wall Street; Tiger gets Social Security; Venus steals. But sex is the great final resource that both attracts people to the crackhouse and sustains their life there. When there is no money, sex will buy cocaine.

Crackhouse roles are structured to keep the high going continuously with only brief periods of depleted supply. As in any household, people share, lest no one share with them. Violating the sharing rule would almost certainly shatter the fragile peace in the edgy, nervous world of the crackhouse.

As in any household, the air is thick with suppressed feuds and petty jealousies. Tiger and Liz and Sonneman, for example, think Headache is too soft on Joan: "She has a tendency to take control and to take advantage of him."

Joan has a different point of view.

"Yesterday," Joan states angrily, "he beat the f--- outta me. And he did it because I didn't wanna hear f---ing Spanish music." The fight which precipitated this unusual outburst of profanity from Joan was caused by her rivalry with Liz. Liz likes Spanish music and Joan does not, or at least not when Headache is getting too much attention from Liz. When Joan complained, Headache hit her. When so much cocaine is coursing through the system, the threat of violence is always there.

At last, the supply of crack is depleted. The last smoky spiral ascends to the ceiling. It is time to get more. Time to go on a mission. One of the younger women volunteers: "I'll try my luck tonight. Anybody got any money?"

The search is on, the thirst is growing. The dance will continue tonight and tomorrow, and compulsively on into the unknown but easily guessed future, not only here but also in hundreds of other crackhouses throughout the five boroughs. A few habitués will be rescued by family or friends. But for many the union with cocaine will be sundered only by death: from AIDS, from chronic self-neglect, from street violence. Sometimes I ask crackhouse residents whether they think the drug should be legal. Every person I asked said no.

The crackhouse is a world about which we know far too little, so we do too little. Many who made their way into the crackhouse do not seem to know or understand how they got there. Many of those I met in the crack culture want to escape reality, but just as many want to escape crack.

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DIARIST

Subway Sex

Remember the subway rides of youth? Downtown to buy fireworks in Mulberry Street, or uptown to the Stadium for a Sunday doubleheader, rooting for Mantle to connect from either side of the plate. Or, in the heat of summer, all the way out to Far Rockaway, and the blessed beach. (One of my oldest friends began making this trek on the IRT from 96th Street unaccompanied by an adult at age six.) The rides were long, the trains were noisy, chewing gum and playing "twenty questions" soon lost their appeal, and eventually one resorted to the only distraction left: reading the subway ads.

Trouble was, there wasn't much to read. Quite a few signs forbade one from spitting, and had, perforce, the opposite effect. Then, as now, there was a peculiar symbiosis between subway trains and advertisements for hemorrhoidal relief. The raciest ads were for one or another brand of beer or cigarettes. The closest one ever got to sex were the remarkably unflattering photos on the posters for the annual Miss Subways Contest. Frankly, that wasn't very close.

Times have changed, though I only noticed quite how much after becoming a father. I was returning from a weekend on Long Island and got off the LIRR at Woodside, clattering up the stairs to sub it into Grand Central Terminal. Once aboard the train I concentrated on my immediate concern, holding my three-month-old son in his baby seat on the floor of the car. Having just finished his maiden train ride comfortably ensconced on a passenger seat, he was at first bemused by the subway's somewhat stronger . . . aura. But he soon delighted in the warm vibrations beneath his seat and began to enjoy himself immensely. Our fellow riders were unfailingly kind, rewarding my every clumsiness with a smile of indulgence. I was lulled into a sense of some security—and then my eyes inched upward.

Hemorrhoid ads are still very much with us. And the promotion of cockroach genocide is also a matter much on media planners' minds. Exhortations to smoke and drink are on the decrease, however, perhaps in part because of the stiff competition from anti-smoking, anti-drinking and anti-drug ads. Miss Subways seems to have abdicated altogether. There were Spanish 800 numbers for gambling info, soap opera updates, and lovelorn advice. There were condom cartoons advising one what to do were one sleeping with a man, provided, that is, one were a man also. There were additional cartoons advising passengers what to do if involved in various other sexual or narcotic promiscuities. There is a mini-series that asks the question: Will Marisol's boyfriend break their love asunder or wise up and use a rubber?

And then there were the sex ads. You can call 800 numbers. You can call 900 numbers (a cunning ploy since many commuters will do so, if at all, from work, and thus pass the exorbitant cost of such calls onto their public or private sector employer). You can get "messages," "fantasies," unspecified "services," anything at all, it seems. The opportunities are endlessly on parade. Not even in yesteryear's subways would one have ever associated the word "solicitous" with MTA service, but finally the Transit Authority has earned the right to it. In yesteryear, if memory serves, soliciting was a crime, even on the subway.

Of course the MTA would deny such a charge, invoking the usual blather about free speech, entrepreneurship, and the need to maximize ancillary revenue But the truth is that the Transit Authority has inflicted a whole new realm of prurient product lines on its captive audience.

And for the straphangers of tomorrow? After completing my brief survey course of Subway Erotica 101, I looked down at young Pierce grinning and gurgling in his seat. One isn't asking for a Mozart exactly, but any sign of precocity is usually welcome. At that moment, however, I was happy that my baby could not yet read. In the weeks since, imagining the conversations we are in for while riding underground five or six years hence has been enough to make me wish he never had to see the inside of a subway car again.

Is the MTA out of its mind?

—James MacGuire

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